

Prospect Surgery

Access to Medical Records

1. Introduction

The law states that organisations must, when requested by an individual, give that person access to their personal health information and, occasionally, certain relevant information pertaining to others. In order to do this, they must have procedures in place that allow for easy retrieval and assimilation of this information.

Access to medical records can be provided via:

- An online portal linked to the organisation's webpage
- A variety of NHS approved apps
- A written SAR request

This policy is written in conjunction with the following government legislation:

- UK General Data Protection Regulation (UK GDPR)
- Data Protection Act 2018
- Data Protection (Subject Access Modification) (Health) Order 2000

2. KLOE

The Care Quality Commission would expect any primary care organisation to have a policy to support this process and this should be used as evidence of compliance against CQC Key Lines of Enquiry (KLOE).

Specifically, Prospect Surgery will need to answer the CQC Key Questions on "Caring". The following is the CQC definition of Caring.

By caring, we mean that the service involves and treats people with compassion, kindness, dignity and respect.

CQC KLOE C3	How are people's privacy and dignity respected and promoted
C3.3	How are people assured that information about them is treated confidentially in a way that complies with the Data Protection Act and that staff support people to make and review choices about sharing their information?

3. Who It Applies To

This document applies to all employees of the organisation and other individuals performing functions in relation to the organisation such as agency workers, locums and contractors.

Furthermore, it applies to clinicians who may or may not be employed by the organisation but who are working under the Additional Roles Reimbursement Scheme (ARRS).

This document explains how patients can access their medical records or those of another individual either by registering for online services or by making a subject access request (SAR) at Prospect Surgery. This is particularly relevant to the administration and reception staff, however, all staff should be aware of the available online services and SARs process and be able to advise patients, relatives and carers of the appropriate process. Failure to comply with the policy and any associated breaches of patient data or confidentiality could lead to prosecution or imposition of penalties by the Information Commissioners Office (ICO).

4. Right To Access

Prospect Surgery ensures that all patients are aware of their right to access their data and have privacy notices displayed in the following locations:

- Waiting Room
- Organisation Website
- Organisation Information Leaflet

The reason for granting access to data subjects is to enable them to verify the lawfulness of the processing of data held about them. In addition, data subjects can authorise third party access, e.g. for solicitors and insurers, under the UK GDPR.

5. Patient Access to Online Medical Records

Patient Online was designed to support GP organisation offering and promoting an online service to their patient population. The service is referred to as 'GP online services' and is offered to patients in addition to telephone and face-to-face interactions at GP organisations. ¹

¹ NHS(E) About Patient Online

All patients should have online access to their full record including the ability to add their own information, as the default position from April 2020, with new registrants of an organisation having full online access to the digital record for their prospective information from April 2019, starting from the date of their registrations for online services, where patients wish to have access.

In addition to the detailed coded record (DCR), access to a full patient record includes free text consultation notes and documents, i.e., hospital discharge letters, referral letters etc.

5. Registering for Online Services

At Prospect Surgery staff are to remind patients that GP online services are free and available to all registered patients.

NHS England has published a number of guides and leaflets that provide further detailed information about how patients can access their health record online.

Patients who wish to register for online services to book or cancel appointments, order repeat prescriptions, view their medical records and clinical correspondence online are to complete the registration form at **Appendix 1.**

Additionally, those applicants wishing to apply for access to information held about other people must complete the appropriate sections on the registration form and the application should be processed in line with the requirements outlined in the proxy access and third party requests section.

For those patients unable to visit their own GP practice, NHS Digital provides access to sign up for online services via their website where there is a requirement to provide appropriate identification using a mobile phone as part of the process.

Prospective access to full records is subject to the same safeguarding information requirements as applied to DCR access. Requests for access can be refused and further detail is provided in the refusal to requests and coercion sections.

ID verification is required to ensure that access is granted only to the patient or their authorised representative(s). All patients will be required to provide two forms of ID verification in line with the NHS Good Practice Guidance on Identity Verification and the organisation accepts appropriate forms of ID outline in the identity verification section.

<https://www.england.nhs.uk/publication/patient-access-to-records-online-prospective-record-access/>

<https://www.england.nhs.uk/wp-content/uploads/2019/12/bma-nhse-joint-statement-prospective-record-access-v1.1.pdf>

<https://www.england.nhs.uk/wp-content/uploads/2015/03/identity-verification.pdf>

Completed documentation will be reviewed by the responsible clinician for processing including the review of the online records for third party references

and any information that may cause harm or distress to the patient/applicant which may need to be hidden from online access using confidentiality policies (see third party information and non-disclosure sections).

Post-Registration

Once a patient has registered at the organisation and the request has been processed, they are issued with a letter that includes their unique username, password and instructions on how to access the online services.

The completed registration form and registration documents are held in the paper only notes of the individual's healthcare record.

Patients can access online services by using the following:

- SystmOnline
- NHS App

6. Subject Access Request (SAR) to Medical Records

Individuals have the right to access their data and any supplementary information held by Prospect Surgery.

The reason for granting access to data subjects is to enable them to verify the lawfulness of the processing of data held about them. In addition, data subjects can authorise third party access, e.g. solicitors and insurers, under the UK GDPR.

When a data subject wishes to access their data, they are encouraged to use the subject access request (SAR) form which can be found at **Appendix 2**. All staff must note that the ICO state:

"An individual can make a SAR verbally or in writing, including on social media. A request is valid if it is clear that the individual is asking for their own personal data."

Any requests not using the SAR form must be processed.

This policy outlines the procedure to gain access to health records at Prospect Surgery:

- Third Party Requests
- Requests from Solicitors
- Requests from insurers (governed by the Access to Medical Records Act 1988, which is part of the Data Protection Act 2018).

SARS are predominantly used for access to, and the provision of, copies of medical records. This type of request need not always be in writing (e.g.

letter, email). However, applicants should be offered the use of a SAR application form which allows for explicit indication of the required information. Verbal requests should be documented and a clarification letter sent or a telephone call made to the patient for approval.

Requesters must be:

- The data subject OR
- Have the written permission of the data subject OR
- Have legal responsibility for managing the subject's affairs to access personal information about that person.

It is the requester's responsibility to satisfy Prospect Surgery of their legal authority to act on behalf of the data subject.

The organisation must be satisfied of the identity of the requester before they can provide any personal information.

Requests may be received from:

- Competent Patient may apply for access to their own records or authorise third party access to their records.
- Children and young people may apply in the same manner as other competent patients and Prospect Surgery will not automatically presume a child or young person has capacity under the age of 16. However, those aged 13 or over are expected to have the capacity to consent to medical information being disclosed. Patients aged 11 years and over for capacity need to be assessed as "Gillick Competent" by a clinician.
- Parents may apply to access their child's health record so long as it is not in contradiction of the wishes of the competent child.
- Individuals with a responsibility for adults who lack capacity are not automatically entitled to access the individual's health records. Prospect Surgery will ensure that the patient's capacity is judged in relation to the particular decisions being made. Any consideration to nominate an authorised individual to make proxy decisions for an individual who lacks capacity will comply with the Mental Capacity Act 2016.
- Next of Kin have no rights of access to health records.
- Police – In all cases the organisation can release confidential information if the patient has given his/her consent (preferably in writing) and understands the consequences of making that decision. There is, however, no legal obligation to disclose information to the

police unless there is a court order or this is required under statutes e.g. Road Traffic Act 2015.

Nevertheless, health professionals at Prospect Surgery have the power under the Data Protection Act 2018 and the Crime Disorder Act 1998 to release confidential health records without consent for the purposes of the prevention or detection of crime or the apprehension or prosecution of offenders. The release of the information must be necessary for the administration of justice and is only lawful if necessary:

- To protect the patient or another person's vital interests, or
- For the purposes of the prevention or detection of any unlawful act where seeking consent would prejudice those purposes and disclosure is in the substantial public interest (e.g. where the seriousness of the crime means there is a pressing social need for disclosure)

Only information that is strictly relevant to a specific policy investigation should be considered for release and only then if the policy investigation would be seriously prejudiced or delayed without it. The police should be asked to provide written reasons why this information is relevant and essential for them to conclude their investigations.

- Court representatives – A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may make an application. Access may be denied where the responsible clinician is of the opinion that the patient underwent relevant examinations or investigations in the expectation that the information would not be disclosed to the applicant.
- Patient representatives/solicitors – A patient can give written authorisation for a person (for example, a solicitor or relative) to make an application on their behalf for copies of their medical records. Prospect Surgery may withhold access if it is of the view that the patient authorising the access has not understood the meaning of the authorisation. It is important to stress to the patient that under a SARs request all health records are provided, unless a specific time period is stated, and patients should be mindful of giving access to this level of health data.

Solicitors who are acting in civil litigation cases for patients should obtain consent from the patient using the form that has been agreed with the BMA and the Law Society. If a consent form from the patient is not received with the application form then no information must be provided until this has been received.

- Requests for insurance medical reports – SARs are not appropriate should an insurance company require health data to assess a claim.

The correct process for this at Prospect Surgery is for the insurer to use the Access to Medical Reports Act 1988 (AMRA) which is now part of the Data Protection Act 2018 when requesting a GP report.

In most cases, the requester will provide the patient's signed consent to release information held in their health record. The BMA have issued guidance on requests for medical information from insurers.

<https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/requests-for-medical-information-from-insurers>

Prospect Surgery will advise insurers that the following fees are applicable:

- GP Report for insurance applicants £104.00
- GP Supplementary report £27.00

It is the responsibility of the data controller to verify all requests from data subjects using reasonable measures.

The use of the organisation's SAR form supports the data controller in verifying the request. In addition, the data controller is permitted to ask for evidence to identify the data subject, usually by using photographic identification, i.e. driving licence or passport.

a. Processing a SAR Request

Upon receipt of a SAR, Prospect Surgery will record the SAR within the health record of the individual to whom it relates, as well as annotating the SAR log – **Appendix 3**. Furthermore, once processed, an entry onto the health record should be made, including the date of postage or the date the record was collected by the patient or authorised individual in addition to updating the SAR log.

Under the Data Protection (Subject Access Modification) (Health) Order 2000 Prospect Surgery will ensure that an appropriate healthcare professional (responsible clinician) manages all access matters. At Prospect Surgery there are a number of such professionals and, wherever possible, the individual most recently involved in the care of the patient will review and deal with the request. If for some reason they are unable to manage the request, an appropriate professional will assume responsibility and manage the access request.

Furthermore, to maintain UK GDPR compliance, the data controller at Prospect Surgery will ensure that data is processed in accordance with Article 5 of the UK GDPR and will be able to demonstrate compliance with the regulation.

Data processors will ensure that the processing of personal data is lawful and at least one of the following applies:

- The data subject has given consent to the processing of his/her personal data for one or more specific purposes
- Processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract
- Processing is necessary for compliance with a legal obligation to which the data controller is subject
- Processing is necessary in order to protect the vital interests of the data subject or another natural person.

Individuals will have to verify their ID and it is the responsibility of the data controller to verify all requests from data subjects using reasonable measures.

The process upon receipt of a SAR form is clearly illustrated in **Appendix 4** which is a flow diagram for staff.

b. Timeframe for Responding to Requests

In accordance with the UK GDPR, patients are entitled to receive a response within the maximum given time frame of one calendar month from the date of submission of the SAR.

In order to ensure full compliance regarding SARs, Prospect Surgery will adhere to the guidance provided in the UK GDPR. In the case of complex or multiple requests, the data controller may extend the response time by a period of two months. In such instances, the applicant must be informed in the first month and the reasons for the extension given.

Should the request involve a large amount of information, the data controller will ask the data subject to specify what data they require before responding to the request. Data controllers are permitted to 'stop the clock' in relation to the response time until clarification is received.

c. Fees

Under the UK GDPR, Prospect Surgery is not permitted to charge data subjects for initial access; this must be done free of charge. In instances where requests for copies of the same information are received or requests are deemed "unfounded, excessive or repetitive",

a reasonable fee may be charged. However, this does not permit the organisation to charge for all subsequent access records.

The ICO has advised that a request may be deemed "manifestly unfounded" if the requestor makes it clear they are only requesting the information to cause disruption to the organisation or if the requestor makes completely unsubstantiated accusations against the data controller. If, however, the requestor has some form of genuine intention in obtaining their information, it is unlikely the request could be deemed as manifestly unfounded.

A request could be deemed as 'excessive; if an application were to receive information via a SAR and then request a copy of the same information within a short period of time. In this scenario, the organisation could charge a reasonable fee based on the administrative costs of providing further copies or refuse the request.

d. Method of Response to Requests

The decision on what format to provide the requested information in should take into consideration the circumstances of the request and whether the individual can access the data in the format provided.

Should an individual submit a SAR electronically, the organisation will reply in the same format (unless the data subject states otherwise).

Where the patient/applicant requests their information to be emailed to them, it is strongly recommended that the organisation explains to the patient/applicant the risk, for example, unauthorised interception of the data, of receiving the data via unencrypted means to a non-NHS email address. The organisation should document the patient's agreement (expressed in writing or via email) to receive their data via unencrypted means in the medical record. If the patient/applicant agrees a USB stick can be used as alternative electronic format.

For those requests that are not made electronically, a paper copy can be provided unless the patient has requested a different format.

e. Amendments to Medical Records

Records should not be amended because of a request for access. It is a criminal offence under the Data Protection Act 2018 to amend or delete records in response to a SAR. If amendments are made between the time that the request for access was received and the time at which the records were supplied, these must only be amendments that would have been made whether or not the request for access was made. When dealing with a SAR, the most up to date information should be provided.

Information that is clinically relevant must not be deleted from medical records (for electronic records, information can be removed from display but the audit trail will always keep the record complete). Amendments to records can be made provided the amendments are made in a way that indicated why the alteration was made so that it is clear that records have not been tampered with for any underhand reason. Patients may also seek correction of information they believe is inaccurate.

f. iGPR

When a request is received through iGPR, it should be processed in accordance with the organisation's iGPR protocol. iGPR will automatically find and redact items in a record that should not be included.

Additionally, to ensure all relevant attachments are included in the report (including any hard copies that are not within the patient's electronic healthcare record), the report should not be processed on iGPR until the organisation is certain that the entire record has been scanned into the patient's record on SystmOne. Once this has been confirmed, the request can be processed but the staff member processing the request must then assign the report to the responsible clinician who will review the report and confirm accuracy before agreeing the report can be sent using iGPR.

g. Additional Privacy Notice Information

Once the relevant information has been processed and is ready for issue to the patient, it is a requirement, in accordance with Article 15 of (UK GDPR), to provide an Additional Privacy Information Notice – **Appendix 5.**

h. Organisation Disclaimer

The template at **Appendix 6** is used when issuing patients with copies of their medical records. This outlines the fact that the patient is responsible for the security and confidentiality of their records once they leave the organisation and that the organisation will not accept any responsibility for copies of medical records once they leave the premises.

7. Refusal to Comply with a Request

Prospect Surgery will only refuse to comply with SAR where exemption applies or when the request is manifestly unfounded or manifestly excessive. In such situations, the data controller will inform the individual of:

- The reasons why the SAR has been refused
- Their right to submit a complaint to the ICO
- Their ability to seek enforcement of this right through the courts

A template letter can be found in **Appendix 7.**

Each request must be given careful consideration and should this organisation refuse to comply, this must be recorded and the reasons for refusal be justifiable.

Being the data controller, Prospect Surgery has the right to refuse any online access or SAR, although any such refusal will be within the allotted timescale and reasons for the refusal will be given.

There are occasions when a GP may firmly believe that it is not appropriate to share all the information contained in the individual's record, particularly if there is potential for such information to cause harm or distress to individuals or when the record contains information relating to a third party. This information can be redacted from the patient's view but must not be deleted from the record. If system functionality to redact information is not available, the record should not be shared with the patient.

8. Coercion

The risks for coercion of patients with online access should always be borne in mind. Patients may be forced into sharing information from their record, including log-in details, medical history, repeat prescription orders, appointment booking details and other private, personal information. By gaining access to a person's record, an abuser may gain further control or escalate harm.

Organisations need to consider whether the organisation's policy on safeguarding should be updated to cover patient online services. Registering patients for online services requires awareness of the potential impact of coercion.

Coercion can happen to children, adults in an abuse relationship and elderly or otherwise vulnerable adults. Access to patient's health records can be particularly attractive to an abusive partner, carer or parent.

At Prospect Surgery all staff involved in registering patients for online services are aware of the potential impact of coercion and the signs to look out for this in order to help patients who might be subject to coercion.

9. Non-disclosure

The UK GDPR provides for a number of exemptions in respect of information falling within the scope of a SAR. In summary, information can generally be treated as exempt from disclosure if:

- It is likely to cause serious physical or mental harm to the patient or another person
- It relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient) and after considering the balance between the duty of confidentiality to the third party and the right of access of the applicant, the data controller concludes it is reasonable to withhold third party information.
- It is requested by a third party and the patient had asked that the information be kept confidential, or the records are subject to legal professional privilege.
- It relates to the keeping or using gametes or embryos or pertains to an individual being born as a result of invitro fertilisation.
- In the case of children's records, disclosure is prohibited by law, e.g. adoption records.

The data controller must redact or block out any exempt information. Depending on the circumstances, it may be that the data controller should take steps to explain to the application how the relevant exemption has been applied. However, such steps should not be taken if, and insofar as they would in effect cut across the protections afforded by the exemptions. In some cases even confirming the fact that a particular exemption has been applied may itself be unduly revelatory, e.g. because it reveals the fact that the information sought is held where this revelation itself is unduly invasive of relevant third party data privacy rights. There is still an obligation to disclose the remainder of the records.

While the responsibility for the decision as to whether or not to disclose information rests with the data controller, advice about serious harm must be taken by the data controller from the responsible clinician, then the appropriate responsible clinician needs to be consulted before the records are disclosed. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters that are the subject of the request. If there is more than one, it should be the person most suitable to advise. If there is none, advice should be sought from another health professional who has suitable qualifications and experience.

Circumstances in which information may be withheld on the grounds of serious harm are extremely rare and this exemption does not justify withholding comments in the records because patients may find them upsetting. Where there is doubt as to whether disclosure would cause serious harm, the BMA recommends that the responsible clinician discusses the matter anonymously with an experience colleague, their Data Protection Officer, the Caldicott Guardian or a defence body.

10. Proxy Access and Third Party Requests

Proxy access to medical records is when an individual other than the patient requests access to a patient's medical record on their behalf to assist in their care. Proxy access arises in both adults and children and is dealt with differently according to whether the patient has capacity or not.

Proxy access should not be granted where:

- The organisation suspects coercive behavior
- There is a risk to the security of the patient's records by the person being considered for proxy access
- The patient has previously expressed the wish not to grant proxy access to specific individuals should they lose capacity, either permanently or temporarily; this should be recorded in the patient's record
- The responsible clinician assesses that it is not in the best interests of the patient and/or that there are reasons as detailed in Denial or Limitation of Information.

Patients have the right to grant a carer, relative or responsible adult or partner access to their online services or copy of medical records. The patient can however limit which online services they want the nominated individual to access. Patients are to be advised that they should not share their own log-in details with anyone.

The nominated individual will be issued with separate log-in details to access the online services for their partner, relative or person they are caring for. To obtain proxy access, a person must be registered for online access at the organisation where the patient they are acting for is registered.

Proxy access in adults (including those over 11 years with capacity)

Patients over the age of 13 (under UK DPA 2018) are assumed to have mental capacity to consent to proxy access. Where a patient with capacity gives their consent, the application should be dealt with on the same basis as the patient. Patients aged 11 years and over need to be assessed as 'Gillick Competent' for them to give access.

Proxy access in adults (including those over 11 years) without capacity

– Proxy access without the consent of the patient may be granted in the following circumstances:

- The patient has been assessed as lacking capacity to decide on granting proxy access and has registered the applicant as a lasting power of attorney for health and welfare with the Office of the Public Guardian
- The patient has been assessed as lacking capacity to decide on granting proxy access and the applicant is acting as a Court Appointed Deputy on behalf of the patient.
- The patient has been assessed as lacking capacity to make a decision on granting proxy access and, in accordance with the Mental Capacity Act 2005 code of practice, the responsible clinician considers it in the patient's best interests to grant access to the applicant.
- When an adult patient has been assessed as lacking capacity and access is to be granted to a proxy acting in their best interests, it is the responsibility of the responsible clinician to ensure that the level of access enabled, or information provided is necessary for the performance of the applicant's duties.

Children and young people's access – It is difficult to say at what age the child will become competent to make autonomous decisions regarding their healthcare as between the ages of 11 and 16 this varies from person to person.

In accordance with Article 8 of the UK GDPR, from the age of 13 young people can provide their own consent and will be able to register for online services.

- **Proxy access in children under the age of 11** – All children under the age of 11 are assumed to lack capacity to consent to proxy access. Those with parental responsibility for the child can apply for proxy access to their children's medical records. Parents will apply for access through the same process outlined about. Additional identification of parental/guardian evidence will be required.
- **Proxy access in children above the age of 11 and under 13 years of age** – Access to medical records will need to be assessed on a case by case basis. Some children aged 11 to 13 have the capacity and understanding required for decision-making with regards to access to their medical records and should therefore be consulted and have their confidence respected.

The responsible clinician will invite the child for a confidential consultation to discuss the request for proxy access under the Data Protection Law.

The responsible clinician should use their professional judgement in deciding whether to grant parental access and/or whether to withhold information.

If the organisation suspects coercive behaviour, access will be refused and documented in the medical notes.

The nominated individual is to complete the online services registration form at **Appendix 1** or SARs application form at **Appendix 2**. Should the organisation opt not to grant the person access to an individual's record, the responsible clinician will contact the patient and advise them of the reasons why this decision has been made.

The organisation may refuse or withdraw formal proxy access at any time if they judge that it is in the patient's best interests to do so. Formal proxy access may be restricted to less than the patient has, e.g. appointments and repeat prescriptions only.

Patients who chose to share their account credentials with family, friends and carers (including a care home) must be advised of the risks associated with doing this. Formal proxy access is the recommended alternative in all circumstances.

- **Proxy access without consent** – The organisation may authorise proxy access without the patient's consent when:
 - The patient does not have capacity to make a decision on giving proxy access
 - The applicant has lasting power of attorney (welfare)
 - The applicant is acting as a Court Appointed Deputy on behalf of the patient
 - The GP considers it to be in the patient's best interests

The person authorising access has responsibility to ensure that the level of access enabled is appropriate for the performance of the applicant's duties.

11. Identity Verification

Before access to health records is granted, the patient's identity and the requestor's identity in cases of proxy access requests, must be verified. There are three ways of confirming patient identity:

- Documentation (forms of identification)
- Vouching

- Vouching with confirmation of information held in the applicant's records

All applications for SARs will require formal identification through two forms of ID, one of which must contain a photo. Acceptable documents include passports, photo driving licences and bank statements but not bills.

Where a patient may not have suitable photographic identification, vouching with confirmation of information held in the medical record can be considered by the data controller or responsible clinician. This should take place discreetly and ideally in the context of a planned appointment.

It is extremely important that the questions posed do not incidentally disclose confidential information to the applicant before their identity is verified.

Adult proxy access verification – Before the organisation provides proxy access to an individual or individuals on behalf of a patient further checks must be taken:

- There must be either the explicit informed consent of the patient or some other legitimate justification for authorising proxy access without the patient's consent
- The identity of the individual who is asking for proxy access must be verified as outlined above.
- The identity of the person giving consent for proxy access must also be verified as outlined above. This will normally be the patient but may be someone else acting under a power of attorney or as a Court Appointed Deputy.
- When someone is applying for proxy access on the basis of an enduring power of attorney, a lasting power of attorney or as a Court Appointed Deputy, their status should be verified by making an online check of the registers held by the Office of the Public Guardian.

Child proxy access verification – Before the organisation provides parental proxy access to a child's medical records the following checks must be made:

- The identity of the individual(s) requesting access via the method outlined above
- That the identified person is named on the birth certificate of the child

In the case of a child judged to have capacity to consent, there must be the explicit informed consent of the child.,

12. Deceased Patients

The UK GDPR does not apply to data concerning deceased persons. However, the ethical obligation to respect a patient's confidentiality extends beyond death. There are a number of considerations to be taken into account prior to disclosing the health record of a deceased patient.

Such considerations are detailed in the Access to Health Records Act 2018. Unless the patient requested confidentiality while alive, under the terms of this Act, Prospect Surgery will only grant access to either:

- A personal representative (executor of the deceased person's estate); or
- Someone who has a claim resulting from the death

No information that is not directly relevant to a claim should be disclosed to either the personal representative or any other person who may have a claim arising out of the patient's death.

The medical records of the deceased will be passed to Primary Care Support England (PCSE) for storage. PCSE will retain the GP records of deceased patients for 10 years after which time they will be destroyed. PCSE has provided an application form which can be used to request copies of a deceased patient's records.

However, should an applicant approach the organisation and where the organisation still holds an electronic copy of the deceased's records, the organisation is obliged to respond to the request under the Access to Health Records Act 2018.

For providing a copy of a deceased patient's medical records, a fee not exceeding the cost of making the copy and post costs may be charged. This fee must be reasonable and fully justifiable.

13. Third Party Information

Patient and organisational records may contain confidential information that relates to a third person. This may be information from or about another person. It may be entered in the record intentionally or by accident.

It does not include information about or provided by a third party that the patient would normally have access to, such as hospital letters.

All confidential third party information must be removed or redacted. This will be reviewed and highlighted by the appropriate responsible clinician or data controller. If this is not possible then access to the information will be refused.

14. Former NHS Patients Living Outside the UK

Patients no longer resident in the UK still have the same rights to access their information as those who still reside here and must make their request for information in the same manner.

Original health records should not be given to an individual to take abroad with them. However, Prospect Surgery may be prepared to provide a summary of the treatment given whilst resident in the UK.

15. Disputes Concerning Contents of Records

Once access to records has been granted, patients or their proxy may dispute their accuracy or lack understanding of medical codes.

Patients or their proxy may notice and point out errors in their record, unexpected third party references and entries they object to or want deleted. The right of rectification and erasure is established with the UK GDPR.

Any queries will be directed to the data controller who will contact the patient. They will investigate swiftly and thoroughly to identify the source and extent of the problem.

The responsible clinician and Caldicott Guardian/data controller will then decide on the most appropriate action. Where the dispute concerns a medical entry, the clinician who made the entry should be consulted and consideration given as to whether it is appropriate to change or delete an entry.

Where it is not possible or practical to contact the clinician concerned, the Caldicott Guardian or data controller should be consulted. It is not possible to amend the records, a meeting with the patient or their proxy should be organised to explain why.

If a patient wishes to apply their UK GDPR rights of:

- Rectification (Article 16 UK GDPR)
- Erasure (Article 17 UK GDPR)
- Restriction of processing (Article 18 UK GDPR)
- Data portability (Article 20 UK GDPR)
- Right to object (Article 21 UK GDPR)

Advice **MUST** be sought from the organisation's Data Protection Officer, Liane Cotterill (liane.cotterill@nhs.net)

Where it is not appropriate to amend a medical record, an entry may be made declaring that the patient disagrees with the entry. If the patient further disputes the accuracy once a decision has been made, they will be referred to the complaint's procedure and/or the Health Ombudsman.

16. Complaints

Prospect Surgery has procedures in place to enable complaints about access to health records requests to be addressed. Please refer to the organisations Complaint's Procedure.

All complaints about access to records and SARs should be referred, in the first instance, to Jayne Henderson, Practice Manager. If the issue remains unresolved, the patient should be informed that they have a right to make a complaint through the NHS complaints procedure. Further information is available at:

<https://www.nhs.uk/using-the-nhs/about-the-nhs/how-to-access-your-health-records/>

Sometimes the patient may not wish to make a complaint through the NHS Complaints Procedure and instead take their complaint direct to the Information Commissioner's Office (ICO) if they believe the organisation is not complying with their request in accordance with the Data Protection Act 2018.

Alternatively, the patient may wish to seek legal independent advice.

Appendix 1 – Application for patient online services template**ONLINE ACCESS TO HEALTH RECORDS REQUEST****In accordance with the UK General Data Protection Regulations (UK GDPR)****Guidance Notes – please read before completing this form:**

If a child aged 11 or over has 'sufficient understanding and intelligence to enable him/her to understand fully what is proposed' (known as Gillick Competence), then she/he will be competent to give consent for him/herself but may wish a parent to countersign as well.

- Patients requiring access to their own record (Sections 1, 2 and 7)
- Proxy access to health records where patient has capacity (Sections 1,3,5,6 and 7)
- Proxy access to health records where patient does not capacity (Sections 1,4,5,6 and 7)
- Parents requesting access to their child's (age 13-17 record (Sections 1,3,5,6, and 7)

Section 1: Patient Details

Surname		Maiden Name	
Forename		Title	
Date of Birth		Address	
Telephone Number		Postcode	
NHS Number (if known)		Hospital Number (if known)	

Section 2: Record Requested

I wish to have access to the following online services (please tick all that apply)

1. Booking appointments	<input type="checkbox"/>
2. Requesting repeat prescriptions	<input type="checkbox"/>
3. Accessing a summary of my medical records	<input type="checkbox"/>
4. Detailed coded record access	<input type="checkbox"/>
5. Full access to medical record	<input type="checkbox"/>

Agreed: October 2021

Date for Review: October 2022

Person Responsible for reviewing this document: Practice Manager

I wish to access my medical record online and both understand and agree with each of the following statements (tick):

I have read and understood the information leaflet provided by the organisation	<input type="checkbox"/>
I will be responsible for the security of the information that I see or download	<input type="checkbox"/>
If I chose to share my information with anyone else, this is at my own risk	<input type="checkbox"/>
I will contact the organization as soon as possible if I suspect that my account has been accessed by someone without my agreement	<input type="checkbox"/>
If I see information in my record that is not about me or is inaccurate, I will contact the organisation as soon as possible	<input type="checkbox"/>

Patient signature		Date	
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Section 3: Consent to proxy access to GP Online Services (if patient has capacity)

- I(name of patient), give permission to my GP practice to give the following person/peopleaccess to the online services as indicated in Section 5.
- I reserve the right to reverse any decision I make in granting proxy access at any time
- I understand the risks of allowing someone else to have access to my health records
- I have read and understand the information leaflet provided by the organisation

Patient signature		Date	
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I/We wish to have access to the health records on **behalf of** the above named patient

Surname		Surname	
Forename		Forename	
Date of Birth		Date of Birth	
Address		Address	
Email		Email	
Telephone		Telephone	

(If more than one person is to be given access then please list the above details for each additional person on a separate sheet of paper)

Reason for Access:

I have been asked to by the patient	<input type="checkbox"/>
I have full parental responsibility for the patient and the patient is under the age of 18 and has consented to my making this request or is incapable of understanding the request (delete as appropriate)	<input type="checkbox"/>

Section 4: Consent to proxy access to GP Online Services (if the patient does not have capacity)

I/We wish to have access to the health records on **behalf of** the above named patient

Surname		Surname	
Forename		Forename	
Date of Birth		Date of Birth	
Address		Address	
Email		Email	
Telephone		Telephone	

(If more than one person is to be given access then please list the above details for each additional person on a separate sheet of paper)

Reason for Access:

I/We have been appointed by the Court to manage the patient/s affairs and attach a certified copy of the court order appointment me to do so	<input type="checkbox"/>
I am/We are acting in <i>loco parentis</i> and the patient is incapable of understanding the request	<input type="checkbox"/>
I am/We are the deceased person's personal representative and attach confirmation of my/our appointment (grant of probate/letters of administration)	<input type="checkbox"/>
I/We have written and witness consent from the deceased person's personal representative and attach Proof of Appointment	<input type="checkbox"/>
I/We have a claim arising from the person's death (please state below)	<input type="checkbox"/>

Section 5: Proxy access online services available

I/We wish to have access to the following services (please tick all that apply)

1. Booking appointments	<input type="checkbox"/>
2. Requesting repeat prescriptions	<input type="checkbox"/>
3. Accessing a summary of my medical records	<input type="checkbox"/>
4. Detailed coded record access	<input type="checkbox"/>
5. Full access to medical record	<input type="checkbox"/>

Section 6: Proxy Declaration

I/We wish to have access to the medical record online of the above patient and I/we understand and agree with each statement (tick)

I/We have read and understood the information leaflet provided by the organisation and agree that I/we will treat the patient information as confidential	<input type="checkbox"/>
I/We will be responsible for the security of the information that I/we see or download	<input type="checkbox"/>
I/We will contact the practice as soon as possible if I/we suspect that the account has been accessed by someone without my/our agreement	<input type="checkbox"/>
If I/we see information in the record that is not about the patient or is inaccurate, I/we will contact the organisation as soon as possible. I/we will treat any information which is not about the patient as being strictly confidential.	<input type="checkbox"/>

I 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 above under the terms of the Data Protection Act 2018.

You are advised that the making of false or misleading statements in order to obtain personal information to which you are not entitled is a criminal offence which could lead to prosecution

Applicant's signature		Date	
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Section 7: Proof of Identity

Under the Data Protection Act 2018, you do not have to give a reason for applying for access to your own health records. However, all applicants will be asked to provide two forms of identification, one of which must be photographic identification before access can be set up.

Please speak to reception if you are unable to provide this.

ADDITIONAL NOTES

Before returning this form, please ensure that you have:

- Signed and dated the form
- Are able to provide proof of your identity or alternatively confirmed your identity by a counter signature
- Enclosed documentation to support your request (if applicable)

Incomplete applications will be returned; therefore please ensure you have the correct documentation before returning the form.

For office use only:

Identification verification must be verified through two forms of ID

- One of which must contain a photo e.g., passport, photo driving licence or bank statement

Where this is not available, vouching by a member of staff or by confirmation of information in the records by one of the management team or a partner may be used

Agreed: October 2021

Date for Review: October 2022

Person Responsible for reviewing this document: Practice Manager

Request received		Request refused	
Reviewed by HCP		Request completed	
Comments			
Identification of	<input type="checkbox"/> Child (aged 13-17)	<input type="checkbox"/> Patient	<input type="checkbox"/> Applicant
Identity verified by		Date	
Identity method	<input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Vouching – by whom <input type="checkbox"/> Vouching with information in record – by whom		
Proxy access authorised by			
Proxy access coded in notes	<input type="checkbox"/> Yes	NHS/EMIS No:	
Date account created		Date password sent	
Level of access enabled	<input type="checkbox"/> All	<input type="checkbox"/> Prospective	<input type="checkbox"/> Retrospective <input type="checkbox"/> Limited parts
Notes for proxy access <i>(If any request is refused, discuss with the organisation's DPO before informing patient/applicant)</i>			

APPENDIX 2 – APPLICATION FOR ACCESS TO MEDICAL RECORDS (SAR)**APPLICATION FOR ACCESS TO MEDICAL RECORDS (SAR)**

In accordance with the UK General Data Protection Regulation (UK GDPR)

Section 1: Patient details

Surname		Maiden name	
Forename		Title	
Date of birth		Address:	
Telephone number		Postcode:	
NHS number (if known)		Hospital number (if known)	

If you are applying to view your own records, please go to Section 2.

If you are applying to view another person's record, please go to Section 3.

Section 2: Record requested

Please tick the relevant boxes below. The more specific you can be, the easier it is for us to quickly provide you with the records requested. Record in respect of treatment for: (e.g., leg injury following a car accident)

I am applying for access to view my records only	<input type="checkbox"/>
I am applying for an electronic copy of my medical record	<input type="checkbox"/>
I am applying for a printed copy of my medical record	<input type="checkbox"/>

Please specify what information you are requesting:

I would like a copy of records between specific dates only (please give dates below)	<input type="checkbox"/>
I would like a copy of records relating to a specific condition/specific incident only (please detail below)	<input type="checkbox"/>
I would like a copy of all my electronic records (held on computer)	<input type="checkbox"/>
I would like a copy of all my electronic and paper records since birth	<input type="checkbox"/>

Patient signature		Date	
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Section 3: Details and Declaration of Applicant

Please complete if you are requesting access on **behalf of** the above-named patient

Surname		Title	
Forename(s)		Address	
Telephone number		Postcode	
Relationship to Patient			

(If more than one person is to be given access then please list the above details for each additional person on a separate sheet of paper)

I am applying for access to view the records only	<input type="checkbox"/>
I am applying for an electronic copy of the medical record	<input type="checkbox"/>
I am applying for a printed copy of the medical record	<input type="checkbox"/>

Please specify what information you are requesting:

I would like a copy of records between specific dates only (please give dates below)	<input type="checkbox"/>
I would like a copy of records relating to a specific condition/specific incident only (please detail below)	<input type="checkbox"/>
I would like a copy of all the electronic records (held on computer)	<input type="checkbox"/>
I would like a copy of all the electronic and paper records since birth	<input type="checkbox"/>

Reason for access:

I have been asked to act by the patient	<input type="checkbox"/>
I have full parental responsibility for the patient and the patient is under the age of 18 and: <ul style="list-style-type: none"> Has consented to my making this request, or Is incapable of understanding the request (delete as appropriate) 	<input type="checkbox"/>
I have been appointed by the Court to manage the patient's affairs and attach a certified copy of the court order appointing me to do so	<input type="checkbox"/>
I am acting <i>in loco parentis</i> and the patient is incapable of understanding the request	<input type="checkbox"/>
I am the deceased person's personal representative and attach confirmation of my	<input type="checkbox"/>

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Date for Review: October 2022

Person Responsible for reviewing this document: Practice Manager

appointment (grant of probate/letters of administration)	
I have written, and witnessed, consent from the deceased person's personal representative and attach Proof of Appointment	<input type="checkbox"/>
I have a claim arising from the person's death (please state details below)	<input type="checkbox"/>

Declaration

I 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 above under the terms of the UK [Data Protection Act 2018](#).

You are advised that the making of false or misleading statements in order to obtain personal information to which you are not entitled is a criminal offence which could lead to prosecution.

Applicant signature		Date	
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I confirm that I give permission for the organisation to communicate with the person identified above in regard to my medical records

Patient signature		Date	
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Section 4: Proof of identity

Under the [Data Protection Act 2018](#) you do not have to give a reason for applying for access to your health records.

Patients with capacity and proxy nominees will be asked to provide two forms of identification one of which must be photographic identification. Please speak to reception if you are unable to provide this.

Section 5: Consent for children

If a child aged 11 or over has "sufficient understanding and intelligence to enable him/her to understand fully what is proposed" (known as Gillick Competence), then s/he will be competent to give consent for him/herself.

They may wish a parent to countersign as well.

Young people aged 16 and 17 are legally competent and may therefore sign this consent form for themselves but may wish a parent to countersign as well.

If the child is under 18 and not able to give consent for him/herself, someone with parental responsibility may do so on his/her behalf by signing this form below.

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Person Responsible for reviewing this document: Practice Manager

I am the patient aged 11 – 18 years	
Signature	
I am the parent/guardian/person with parental responsibility (delete as necessary)	
Signature	
Full name	
Address	
Date	

You will be telephoned when the copies are ready for collection or posting.

ADDITIONAL NOTES:

Before returning this form, please ensure that you have:

- Signed and dated the form
- Are able to provide proof of your identity or alternatively confirmed your identity by a countersignature
- Enclosed documentation to support your request (if applicable)

Incomplete applications will be returned; therefore please ensure you have the correct documentation before returning the form.

For office use only:

Identification verification must be verified through 2 forms of ID

- One of which must contain a photo e.g., passport, photo driving licence or bank statement.

Where this is not available, vouching by a member of staff or by confirmation of information in the records by one of the clinicians may be used.

If this is a proxy request, where patient has capacity, both patient and proxy should provide identification as above in person.

Request received		Request refused	
Reviewed by		Request completed	
Fee (see section 6.4)		Date sent	
Comments			
Patient identity verified by		Date	
Method	<input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Vouching – by whom <input type="checkbox"/> Vouching with information in record – by whom		
Proxy identity verified by		Date	
Method	<input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Photo ID or proof of residence – Type <input type="checkbox"/> Vouching – by whom <input type="checkbox"/> Vouching with information in record – by whom		

Agreed: June 2021

Date for Review: June 2022

Person Responsible for Reviewing this document: Practice Manager

APPENDIX 3 – DATA SUBJECT ACCESS REQUEST LOG

Data Subject Access Request Log (Prospect Surgery)

Patient Reference	Date Received	Responsible Person	Date Processed	System Updated	Date posted or collected	Signed (by patient if collected)

Agreed: June 2021

Date for Review: June 2022

Person Responsible for Reviewing this document: Practice Manager

APPENDIX 4 – DSAR Desktop Aid-Memoire

APPENDIX 5 – ADDITIONAL PRIVACY INFORMATION NOTICE

[Insert organisation name]

[Organisation address]

[Contact number]

Dear [insert patient name],

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information [insert organisation name] holds about you. Please find enclosed all relevant information. To comply with Article 15 of the UK General Data Protection Regulation, we are obliged to advise you of the following:

- 1. The purposes of the processing:** *Your data is collected for the purpose of providing direct patient care. In addition, the organisation contributes to national clinical audits and will send information such as demographic data, i.e., date of birth and coded information about your health, to NHS Digital.*
- 2. The categories of data concerned:** *We process your personal and health data in accordance with Article 9 of the GDPR.*
- 3. The recipients or categories of recipients:** *Your data has been shared with [insert organisation(s)] to enable the provision of healthcare.*
- 4. How long your information will be retained:** *Records are retained in accordance with the NHS retention schedule; GP records are retained for a period of 10 years following the death of a patient.*
- 5. The right to rectification or erasure of personal data:** *Should you find any inaccuracies within the data we hold, please advise us of the inaccuracies and we will discuss with you how to rectify these.*
- 6. The right to lodge a complaint with the supervisory authority:** *In the unlikely event that you are unhappy with any element of our data processing methods, you have the right to lodge a complaint with the ICO. For further details, visit ico.org.uk and select "Raising a concern".*
- 7. How we obtained any of the data we hold about you:** *[Insert name] NHS Hospital Trust has provided us with [insert brief explanation of what has been provided] following your [admission/referral/specialist appointment].*
- 8. Any automated processing activities:** *This is not applicable to your data.*

Should you have any questions relating to the information provided in this letter or about the copies of information we have provided, please contact [insert name] at the organisation on [insert number or give email address].

[Insert name]

[Insert role]

APPENDIX 6 – Organisation Disclaimer

[Insert organisation name]

[Organisation address]

[Contact number]

Dear [insert patient name],

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information that [insert organisation name] holds about you. You have been provided with this information along with an Additional Privacy Information notice in order to comply with the UK General Data Protection Regulation (UK GDPR).

You are responsible for the confidentiality and safeguarding of the copies of your medical records which have been provided to you. This organisation accepts no responsibility for the copies once they leave the premises.

By signing this form, you are accepting full responsibility for the security and confidentiality of the copies of your medical records.

Patient name: [Insert full name]

Patient ID number: [Insert system ID number]

Patient signature:

APPENDIX 7 – REFUSAL OF SAR LETTER

[Insert organisation name]

[Organisation address]

[Contact number]

Dear [insert third party name],

On [insert date], a Subject Access Request (SAR) was received requesting copies of the information that [insert organisation name] holds about [insert patient name].

In order to process this request, the Information Commissioners Office (ICO) Code of Organisation requires any application for a SAR to meet strict criteria and that the data controller must be satisfied that the request is meeting these. In some circumstances, there are reasons as to why information should not be given.

In this instance, it is felt that [insert organisation name] cannot process this request for the following reason*:

*[delete as appropriate]

- It is manifestly unfounded (see footnote 7 for ICO explanation)
- It is an excessive request, i.e., the insurer is requesting a full copy of the medical records, when this could be deemed as being unreasonable or excessive for the purpose (See Art 3.2)
- The information required details a further third party therefore a separate SAR would be required
- The information may be detrimental or cause harm to the requesting patient or any other person
- It includes information about a child or non-capacitous adult which would not be expected to be disclosed to the person making the request
- It is legally privileged information
- It is information that is subject to a Court Order

Should you have any questions relating to the information provided in this letter, please contact [insert name] at the organisation on [insert number or give email address].

If you disagree with the actions being taken, then you have the right to make a complaint to the Information Commissioners Office (ICO) at:

Agreed: June 2021

Date for Review: June 2022

Person Responsible for Reviewing this document: Practice Manager

Address: Information Commissioner's Office
Wycliffe House
Water Lane
WILMSLOW
SK9 5AF

Telephone: 0303 123 1113

Website: <https://ico.org.uk/global/contact-us/>

Alternatively, you may seek to enforce your right through judicial remedy.

Yours sincerely,

[Insert name]

[Insert role]