



## **POLICY: ACCESS TO PERSONAL INFORMATION**

### **INTRODUCTION**

This policy and related procedures reflect the relevant legislation and have been put in place to help staff and volunteers to support individuals who wish to exercise their rights under the Access to Health Records Act 1990 and/or UK data protection legislation. Where a member of staff or volunteer requests access to personal information contained in their HR file, this request will be dealt with in line with UK data protection legislation and will be overseen by the Hospice C.E.O. A similar process applies if one of our supporters requests access to personal information held about him/her. These requests will be overseen by the Fundraising and Communication Co-ordinator. Any request from a living individual for access to personal information held about them by the Hospice will be dealt with as a 'Subject Access Request'.

The Hospice is responsible for ensuring that all requests for personal information are dealt with in an efficient and timely manner whilst maintaining confidentiality. Requests for patient's records can be received from other hospitals (outside North Derbyshire), Solicitors, Department of Social Security, Criminal Injuries Compensation Board, etc. When disclosing the content of health care records to other bodies, it is the Hospice's responsibility to ensure that these are only released to clinicians taking responsibility for the care and treatment of the patient. In all circumstances, the Hospice is responsible for ensuring that disclosure of patient information is made in accordance with data protection legislation or the Access to Health Records Act 1990 (in the case of deceased records) and, unless there are lawful reasons otherwise, is preceded by patient consent for that disclosure.

In the case of Access to Health Records Act requests, information contained within a deceased patient's record will only be disclosed to the patient's personal representative or a person who may have a claim arising from the patient's death. Following receipt of such a request, the wishes of the deceased and their confidentiality will be considered and maintained prior to the release of any information.

Where there are concerns regarding safeguarding, information must be shared in accordance with the recommendations in the Caldicott Review (2013 and 2016) and other relevant legislation such as Data Protection, Mental Capacity Act, Human Rights Act etc.

### **POLICY STATEMENT**

The Hospice will ensure that individuals can request access to their records held by the Hospice in line with UK Data Protection legislation. In the case of deceased

patients, the patient's authorised representative can submit a request under the provisions of the Access to Health Records Act 1990.

Individuals who can apply for access under UK data protection legislation or Access to Health Records Act include:

- a) The living person about whom the record relates to
- b) Persons acting on behalf of a living individual e.g. by written authorisation, in loco parentis, court appointment, personal representative
- c) A deceased patient's personal representative or someone who has a claim arising from the patient's death.

A spreadsheet of requests for disclosed health care, HR and supporter records is held for three years following the date of disclosure.

Health care records received from other organisations will not automatically be released to a third party. Patient consent will be obtained where appropriate.

## **METHOD**

This policy and procedure provide guidance on the rights individuals have to access their personal information and the way the Hospice manages these requests.

## **SCOPE**

### Right of Access

UK Data Protection legislation gives individuals the right to access to their own personal information. Applicants can have copies of their records and/or they can access their original records in the presence of a Hospice employee if they prefer.

Corrections to the record can be requested if errors or omissions are identified. The applicant is entitled to a copy of the correction or; if the record is not corrected, then a note should be added recording the applicant's comments and the reasons for refusing the request.

Complaints regarding non-compliance with Hospice policy and procedures should be taken up through the Hospice complaints procedure.

Nothing in the legislation prevents Health Professionals exercising their existing voluntary discretion to allow their patients to see what has been documented in their health record.

### Confidentiality

Patients have a right to confidentiality of their personal health information and the Hospice must be satisfied that an applicant is the patient or is otherwise entitled to

access that information. The same applies to personal information held within non-clinical records e.g. HR, volunteers or supporters, identity will be confirmed prior to any information being released.

## **CUSTODY**

An electronic version of this policy is available on the Hospice Intranet.

## **RESPONSIBILITY**

The Hospice C.E.O, Data Protection Lead and Departmental Senior Managers are responsible for implementing this policy throughout the Hospice. They are also responsible for ensuring that the individual who has requested access has the right to do so. They should nominate a member of staff (in the case of access to health records this should be a member of clinical staff) to be available to go through the records with the individual where only viewing of the record has been requested.

The employee who has been nominated to assist the individual with authorised access has the responsibility of answering questions to the best of their knowledge, ensuring any corrections requested by the individual to the records are noted as requests for correction. These requests should be signed (including name and designation of signatory), dated and timed.

All employees are responsible for recognising a request and ensuring that this is immediately reported to the Hospice C.E.O and the Data Protection Lead (for clinical requests). Any requests for non-clinical records should be reported immediately to the Hospice C.E.O. and the Data Protection Lead who will then liaise with the appropriate Senior Managers; depending on whether the requestor is a Hospice worker or supporter.

## **PROCEDURE**

### Requesting access to or copies of records

1. Requests for access to health records of patients who are not currently accessing the Hospice services do not have to be in writing. They can be verbal, and it is our responsibility to make a record of the request and support the requestor. We can offer to help by providing a copy of our Access to Personal Information Request form, but we cannot force individuals to complete it. Requests for clinical information should be compiled and approved with the Data Protection Lead.

Requests for access from patients, who are currently accessing Hospice services, should be directed to the Senior Manager in charge of care, who will consider the request and arrange for access to view and discuss the record with the patient. Copies of the record can also be provided.

Requests for access to HR records from members of staff or volunteers can be made verbally or in writing and should be directed to the Hospice C.E.O / Data Protection Lead and the individual's Line Manager. We can support the requestor by providing a copy of our Access to Personal Information Request form, but we cannot force an individual to complete this. The Data Protection Lead will liaise with Hospice C.E.O regarding the request.

2. Requests for access to information held about Hospice supporters can be made verbally or in writing and should be directed to the Hospice C.E.O. / Data Protection Lead. We can support the requestor by providing a copy of our Access to Personal Information Request form, but we cannot force an individual to complete this.
3. Requests for access to or copies of records must include:
  - a) The name, address and date of birth of the person whose records are requested.
  - b) The date applicable to the request.
  - c) The name and address of the applicant if different from (a)
4. Requests for access to the records of a deceased patient will be dealt with under the Access to Health Records Act 1990; therefore, these requests must be provided in writing (email is acceptable).

#### Responding to requests for access to or copies of records

1. Requests for records must be responded to:
  - a) Within 21 days; - the legislation allows for a maximum of 1 calendar month from the date of receipt to respond. This can be extended by a further 2 months if the request is complex or excessive, but the requestor must be informed of the delay and reasons first.
  - b) An acknowledgement letter should be sent to the applicant as soon as possible (within a week of receipt) notifying them when the information will be made available.
  - c) All information is provided free of charge to the requestor. This also applies to the disclosure of deceased patients' records.

In response to a request to view health records a member of the clinical team is nominated to facilitate the viewing of the records. The nominated member of staff must be able to answer any questions the applicant may have in relation to

disease and treatment. Applicants can be provided with a copy of the record if they wish.

2. In response to a request to view non-clinical records a member of staff should be nominated by the Hospice C.E.O to facilitate the viewing of the records. Applicants can be provided with a copy of the record if they wish.
3. Prior to receiving copies of or viewing records, the Hospice will need to be satisfied that the applicant can have access to the information. If the applicant is already known to the Hospice and can be identified in person or via the telephone i.e. correctly answering security questions, this should be recorded by the Hospice as satisfactory identification. If the applicant is not known to the Hospice, they will be asked to provide evidence of his/her right to access the records and suitable identification i.e. photographic ID, Power of Attorney etc.
4. If requests for access to deceased patients' records are received from third parties i.e. Solicitors, they should provide a copy of the consent form / disclaimer signed by the patient's personal representative. If this is a recognised signature or person to the Hospice, the request can continue to be considered. If the signature or person is not recognised by the Hospice, further identification should be requested i.e. passport, driving licence, legal confirmation that the person is the Executor of the deceased's estate or has a claim arising from the patient's death.
5. An appointment can be made for the applicant to attend the Hospice at a time convenient for both applicant and the supervising member of staff if they only wish to view the records. Copies of records are sent out by Recorded Delivery in the first-class post.
6. Following the Caldicott Review in 2013, there is a requirement to share information where not doing so would be detrimental to the care of a patient, for example, in cases where there are concerns regarding safeguarding. If information of this nature is identified in a health record, please speak to the Caldicott Guardian/Hospice C.E.O.

#### Supervising the viewing of records

A member of staff will remain with the records and the applicant. If clarification of an entry in the record is needed and the member of staff is unable to answer this query, then the most appropriate member of the team should be contacted for further advice.

1. The applicant has the right to request corrections to be made in the records if errors or omissions are identified and they are entitled to a copy of the correction. If a record is not corrected, then a note should be inserted in the

record noting the applicant's request and comments as to why the request was refused.

2. Following the viewing, the records must be returned to the relevant department for filing. The applicant will be asked if they require any copies of the record to take away with them.

### Sending copies of records

Copies of personal information will be released by first class recorded delivery post. It is best practice to provide copies of the record rather than the originals.

If it is agreed with the applicant that notes should be copied and sent out, then the format of the record should be agreed with the applicant i.e. paper copy, email, CD etc.

1. Prior to sending out any information, the Hospice must be satisfied of the applicant's identity and authorisation to receive the information. Confirmation of this will be recorded in the individual's record.
2. The applicant must be informed, if they have any questions, they should contact the Hospice for further explanation.

Urgent requests for patient information should be discussed immediately with the Caldicott Guardian / Data Protection Lead.

Prior to the disclosure of any medical information, consent for release for litigation purposes must be obtained from the relevant health care professionals that have treated the patient irrespective of how long ago the patient attended the Hospice. Any subject request is based upon the care given by Blythe House Hospicecare and applicants wanting information from other external healthcare professionals involved in their care are advised to contact them directly.

### Can I refuse an access to records request?

In general, all valid subject access requests will be released although there may be circumstances where certain information could be restricted. These include:

- If it is considered that information in the records, if released, may **cause serious harm** to any individual.
- Where there is personal information concerning **another person** contained within the records. However, it may be reasonable to obtain consent from the third party if they have not already consented to their information being released.

Under these circumstances, please discuss with the Data Protection Lead for further advice. Decisions will be made on a case by case basis.

We can refuse to comply with a request if it is manifestly unfounded, excessive or repetitive, but we must be able to justify the decision. The individual must be informed of this decision without undue delay and within one month's receipt (21 days) of receiving the request.

The individual must be informed that they have a right to complain to the Information Commissioner's Office if they do not agree with the decision to refuse the request. However, if the individual wishes to make a complaint as to how their request had been handled, we must ensure that their complaint is handled in line with the Hospice Complaints Policy in the first instance.

**Linked Policies are available on the Blythe House Hospicecare Intranet and in the department policy folders**

- Safeguarding Policy
- Whistleblowing Policy
- Complaints Policy
- Data Protection Policy
- Mental Capacity Policy
- Confidentiality

**EQUALITY IMPACT STATEMENT**

All policies must be screened to determine equality relevance. This is to ensure that the policy does not have any possible or actual adverse impact on any groups/individuals in respect of their gender, race, disability, religion or belief, sexual orientation and age.

This policy has been screened to determine equality relevance and is considered to have low equality relevance. A copy of the impact assessment for this policy is available from the Data Protection Officer.

## ACCESS TO PERSONAL INFORMATION REQUEST FORM

### PARTICULARS OF PERSON WHOSE INFORMATION IS REQUESTED:

Surname: ..... Record No: .....  
Forename (s): ..... Date of Birth: .....  
Current Address: .....  
.....  
Post Code: ..... Telephone No: .....

Please provide additional information if name and/or address is different from above, during period (s) to which the application relates.

Previous Surname: (1) ..... (2) .....  
Previous Address: .....  
.....  
Applicable dates: .....  
.....

### INFORMATION REQUIRED:

Please supply information relating to the episodes listed below:

*(episode means a contact with the Hospice e.g. Day Hospice, home care visit, employment, event, volunteering period, donation etc)*

Episode: ..... Dates: ..... Consultant: .....

.....  
.....  
.....  
.....

I would like a copy of all available records

*(You are entitled; as the Data Subject, to request all the information we hold about you; however, refining your request can help us to complete a quicker search of our records).*

### 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 record referred to above under the terms of the Access to Health Records Act 1990 and/or UK data protection legislation.

- I am the patient / Data Subject i.e. Hospice employee, volunteer or supporter
- I have been asked to act by the patient / Data Subject and attach the patient's / Data Subject's written authorisation.
- I am acting in loco parentis and the patient is under age 16 and is incapable of understanding the request / has consented to my making this request
- I am the deceased patient's personal representative or next of kin.
  
- I have a claim arising from the patient's death and wish to access information relevant to my claim on the grounds that: .....

.....  
Signature: ..... Name: ..... Date: .....  
Current Address: .....  
.....  
Post Code: ..... Telephone No: .....

**PROOF OF IDENTITY:**

To avoid the risk of releasing personal information to unauthorised persons, it is important that we confirm your identity. If requested, please provide an original household bill showing your name and address and a photocopy of your photo card driving licence or passport.

**HOSPICE USE ONLY**

Date received: ..... Proceed: Yes / No  
Date more information requested: ..... Date returned: .....  
  
Date passed to Health Professional / HR / Fundraising: .....  
Name of Health Professional / staff advising: .....  
Date returned: .....  
Appointment for access on / date records sent out: .....

**COMMENTS:**

*(Include details of any corrections requested and details of records seen)*

[Empty box for signature]

Signature of Health Professional / supervising staff: .....

Print name.....

Date: .....

Date records returned for filing: .....

*Please note this form must be filed with the patient / HR / volunteer / supporter records.*

## Appendix 1 – Subject Access Request Flowchart

