

Access to Health Records Policy

Reference Number:	This will be applied to all new ICB-wide PPSs by the Governance and Corporate Affairs Team and will be retained throughout its life span.
Version:	Version 1.0
Name of responsible Committee and date approved or recommended to Integrated Care Board Board:	Audit Committee
Date approved by the Integrated Care Board (if applicable):	1 July 2022
Next Review Date:	1 April 2023
Expiry Date:	1 July 2023
Name of author and title:	
Name of reviewer and title:	
Department:	Corporate Office

VERSION HISTORY

Date	Version	Changes made to previous version	Consulting and Endorsing Stakeholders, Committees / Meetings / Forums etc.

Contents

1. Introduction	3
2. Definitions	3
3. Scope	3
4. Audience	3
5. The General Data Protection Regulations	3
6. Data Subject Access	4
7. Procedures	5
8. Processing an Access to Health Records Request	6
9. Training	8
10. Monitoring and Assurance	8
11. Equality & Diversity Impact Assessment	8
12. Monitoring Compliance and Effectiveness of the Policy	9
13. References and Further Reading	9

1. Introduction

- 1.1. For deceased persons, applications are made under the Access to Health Records Act 1990, as the Data Protection Act 2018 only applies to living individuals. This policy provides the right of access to the health records of deceased individuals for their personal representative and others having a claim under the estate of the deceased.

2. Definitions

- 2.1. A health record can be in computerised and/or manual form. It may include such documentation as hand written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records, printouts, photographs, videos and tape/digital recordings.
- 2.2. Personal information relating to an individual includes factual information, expressions of opinion, and the intentions of the health professional in relation to the individual concerned.

3. Scope

- 3.1. This policy has been created to enable NHS Coventry and Warwickshire Integrated Care Board ("the ICB") to comply with the Access to Health Records Act.
- 3.2. This policy is complementary to other ICB policies and should be used/read in conjunction with them.

4. Audience

- 4.1. This policy applies to full-time and part-time employees of the ICB, lay members, contracted third party organisations and individuals (including agency and Bank staff), students/trainees, secondees and other staff on placement with the ICB, and staff or partner organisations with approved access (hereafter referred to as staff).

5. The General Data Protection Regulations

5.1. Individual Staff Responsibilities

The ICB's Governing Body, Chiefs, managers and staff are responsible for complying with this Access to Health Records Policy.

5.2. Governing Body

The ICB has a duty to ensure that the requirements of the Access to Health Records Policy 1990 are upheld.

5.3. Chief Officer

The Chief Officer has overall responsibility for the organisation's compliance with the Access to Health Records Policy 1990 and adherence to this policy.

5.4. Associate Director of Governance and Corporate Affairs

Chief Strategy Officer will regularly report to the ICB's Governing Body in relation to access to health records activities and will liaise with other senior members of ICB staff as required.

5.5. Caldicott Guardian

The Caldicott Guardian is responsible for ensuring that the ICB is compliant with the confidentiality requirements of the Access to Health Records Policy 1990.

5.6. Governance and Corporate Affairs Manager

The Corporate Governance Manager is responsible for processing all access to health records requests and providing regular updates to the Information Governance Steering Group and Clinical Quality and Governance Committee.

5.7. Managers

Managers are responsible for ensuring that information within the notes is disclosable under the requirements of the Access to Health Records Policy 1990. They must also ensure that records are provided in a timely fashion in order to meet the timescale for releasing information.

5.8. All Staff

All staff across the ICB have a responsibility to ensure they comply with the ICB's statutory obligation under the Access to Health Records Policy, and any policies and procedures laid down by the ICB to ensure compliance. Failure to do so may result in disciplinary action.

5.9. Coventry and Warwickshire Information Governance Steering Group

The Information Governance Steering Group is responsible for reviewing all aspects of access to health records within the ICB. This group reports to the ICB's Clinical Quality and Governance Committee.

6. Data Subject Access

- 6.1. An individual does not have the right to access information recorded about someone else, unless they are an authorised representative, have parental responsibility, or are acting on behalf of a deceased person.
- 6.2. The ICB is not required to respond to requests for accessing health records unless it is provided with sufficient details to enable the location of the required information and to satisfy itself as to the identity of the individual making the request.

7. Procedures

7.1. Receiving an Access to Health Records Request

All requests should be sent to the Governance and Corporate Affairs Manager at the ICB where they must be logged on receipt.

The ICB can only provide records produced and owned by the organisation. These do not include acute/general hospitals, mental health, learning disability and GP records.

7.2. Patient or Relative Requests

The access request letter will be reviewed to make sure that it contains the minimum data required, as follows:

- Full name of the patient;
- Full address of the patient;
- Date of Birth of the patient;
- 10-digit NHS number of the patient (if available);
- Signature of the patient or person representing the patient;
- There must be evidence of the relationship to the deceased patient and evidence of the death;
- Sufficient information to be clear as to the exact records required – this could state all records or physiotherapy records for example;
- Specific dates of the records required

If this minimum data requirement is not met, the requestor will be sent the Access to Health Records Application form at Appendix 1.

7.3. Requests by a Solicitor or Other Agency

In addition to the information above, the request must be accompanied by signed authorisation from the patient giving their consent to release the information.

7.4. Requests from the Police

Duty of confidentiality extends to deceased patients, but where the police are working on behalf of the coroner's office, they are entitled to obtain copies of medical information that is relevant and necessary to their investigations.

Otherwise, the consent of the executor of the estate or the personal representative would be needed before such information could be released, unless you believe the situation justifies a breach of confidentiality (i.e. it is in the public interest).

7.5. Requests from the Court

- All Court Orders will come directly from the court and will have the relevant court's seal or stamp.
- The Court Order must be date stamped on receipt.
- The Court Order should be specific in its requirements. If necessary, the Access to Health Records Officer can seek clarification from the Clerk of the Court over any points of concern.
- Where appropriate, the court will be advised that all other organisations e.g. Acute/General Hospital, Mental Health and Learning Disability and GPs and Local Government, will require individual court orders.
- The Associate Director of Governance and Corporate Affairs will note the timescale given by the court for producing the relevant records.
- The Court Order will be accompanied by a court letter, the content of which must be followed. The Associate Director of Governance and Corporate Affairs will be required to serve non-redacted notes to the court/authorised Solicitor.

8. Processing an Access to Health Records Request

8.1. Obtaining the Records

Once the validity of the request has been established, the Associate Director of Governance and Corporate Affairs will take steps to locate the records and obtain copies.

If the request is for all healthcare records for an individual, the Associate Director of Governance and Corporate Affairs will liaise with the relevant healthcare professionals and service leads to ascertain which records relate to services provided directly by the ICB.

Where specific records only are requested, the Associate Director of Governance and Corporate Affairs will write to the relevant healthcare professional(s) detailing which records are being requested.

Once the records are available and forwarded to the Associate Director of Governance and Corporate Affairs, he/she will take copies and return original records to the relevant healthcare professional.

The copies then need to be scrutinised by the relevant healthcare professionals to determine if any information contained therein needs to be restricted. The Arden GEM CSU Support Compliance Lead can also be contacted directly for further advice/guidance.

Copies of the redacted/restricted records(s) should then be returned to the Associate Director of Governance and Corporate Affairs with a signed 'Clinical Consent to Release' form (Appendix 2), for release to the requestor.

8.2. Sending the Copies of Records

Once all relevant copies of records have been provided with authority to release, the Associate Director of Governance and Corporate Affairs will send them to the requestor.

In line with the Safe Haven Policy, originals of records should not be sent. If this option is being contemplated because of the volume or for any other reason, then Caldicott Guardian must be contacted for approval prior to sending.

Copies of records will be sent by Recorded Delivery in a secure and sealed envelope to a named person. NB: Copies of records to the court will be sent Special Delivery to ensure compliance with the Court Order.

Sending via Recorded Delivery will enable the ICB to provide proof of posting and to track receipt of the copies.

The Recorded Delivery slip will be added to the individual patient's Access to Health Records file by ICB.

8.3. Recording the Access Request

The relevant Healthcare Professional will make a note of the pages and/or entries that have been redacted or removed and why. This is necessary in case there are any challenges by the patient or their representative to what has and has not been disclosed. It is also helpful if further request is received at a later date or by another legitimate requestor.

The Associate Director of Governance and Corporate Affairs will log all access requests received on the Access to Health Records log and track the ICB's progress and response to all such requests.

All of the data fields will be completed by the Associate Director of Governance and Corporate Affairs.

The original request, subsequent correspondence and a record of any information not disclosed should be kept in the patient's health care record.

8.4. Timescales

The records will be sent to the recipient wherever possible within 21 calendar days.

These timescales will not be applicable in the case of Court Orders as they will stipulate the date records are required.

The Corporate Lead will keep copies of the correspondence relating to the access request for 3 calendar years following completion of the request, in case of queries and subsequent access requests.

8.5. Appeals Procedure

8.5.1. If the requestor believes that there is some data that the ICB has not supplied or is not satisfied with the response from the ICB, they should be advised that they will be able to seek an internal review of that decision by a senior ICB officer. An officer who was not involved with the original decision would be commissioned by the Associate Director of Governance and Corporate Affairs to undertake the internal review. The requestor will be informed of the outcome of the review in due course. Complaints regarding information that individuals consider should have been provided but was not can be made to the Associate Director of Governance and Corporate Affairs in the first instance.

8.5.2. (ii) Following the internal review, if the individual still remains dissatisfied, they should be advised that they can seek an independent review from the Information Commissioner. Requests for a review by the Information Commissioner should be made in writing directly to:

The Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 700

9. **Training**

9.1. There are no training requirements in relation to this policy; however, staff will be made aware of this policy via the Corporate Governance induction process.

10. **Monitoring and Assurance**

10.1. The Clinical Quality and Governance Committee will receive regular reports regarding Access to Health Record requests.

11. **Equality & Diversity Impact Assessment**

11.1. In reviewing this policy, the ICB considered, as a minimum, the following questions:

- Are the aims of this policy clear?
- Are responsibilities clearly identified?
- Has the policy been reviewed to ascertain any potential discrimination?
- Are there any specific groups impacted upon?

- Is this impact positive or negative?
- Could any impact constitute unlawful discrimination?
- Are communication proposals adequate?
- Does training need to be given? If so, is this planned?

11.2. Adverse impact has been considered for age, disability, gender reassignment, marriage and civil partnership, pregnancy, race, religion or belief, sex, sexual orientation. No adverse impacts have been identified.

12. Monitoring Compliance and Effectiveness of the Policy

12.1. The Clinical Quality and Governance Committee will oversee implementation of the policy.

12.2. The policy will be reviewed every three years by the Governing Body. Staff will be notified of any key amendments made.

13. References and Further Reading

13.1. This policy should be read in conjunction with the following:

- Subject Access Request Procedure;
- Safe Haven Policy and Procedure.

Equality Impact Assessment

Directorate Information Governance Name of lead person

Piece of work being assessed

Aims of this piece of work

Date of EIA Other partners/stakeholders involved

Who will be affected by this piece of work?

Single Equality Scheme Strand	Baseline data and research on the population that this piece of work will affect. What is available? Eg population data, service user data. What does it show? Are there any gaps? Use both quantitative data and qualitative data where possible. Include consultation with service users wherever possible	Is there likely to be a differential impact? Yes, no, unknown
Gender	This policy applies to both genders and there is no evidence or informal intelligence to suggest that either will be disadvantaged more than the other in applying this policy	No
Race	This policy applies to all races and there is no evidence or informal intelligence to suggest that any race will be disadvantaged more than the other in applying this policy	No
Disability	This policy applies to all staff and there is no evidence or informal intelligence to suggest that anyone with a disability would be disadvantaged more than someone who didn't have a disability.	No
Religion/ belief	This policy applies to all staff irrespective of their religion/religious beliefs and there is no evidence or informal intelligence to suggest that people holding differing religious beliefs would be disadvantaged more than another in applying this policy	No
Sexual orientation	There is no evidence or informal intelligence to suggest that people of differing sexual orientation will be disadvantaged more than another in applying this policy	No
Age	This policy applies to ICB staff of all ages. There is no evidence or informal intelligence to suggest that differing ages would cause anyone to be disadvantaged more than another in applying this policy	No
Social deprivation	This policy applies to ICB staff irrespective of social status. There is no evidence or informal intelligence to suggest that people of differing social status would be disadvantaged more than another in applying this policy	No
Carers	This policy applies to ICB staff irrespective of carer responsibilities. There is no evidence or informal intelligence to suggest that people with carer responsibilities would be disadvantaged more than someone who didn't	No
Human rights	This policy is intended to protect the human rights of everyone and there is no evidence to suggest that it would disadvantage anyone who wishes to abide by the terms and conditions of employment and other legal requirements such as the Data Protection Act 2018 and the Freedom of Information Act 2000	No

APPENDIX 1 Application for Access to Health Records

Please complete this form and return it with any other necessary paperwork to:

Corporate Governance Manager

Coventry and Warwickshire ICB

Application for Access to Health Records

(Access to Health Records 1990)

1. Name of Health Professional(s) from whom records requested <i>(e.g. Doctor, Nurse, Community Dentist, Physiotherapist)</i>	
2. Address of Service <i>(e.g. Royal Leamington Rehabilitation Hospital, Bramcote Hospital,)</i>	
3. Name of the Patient whose records are to be accessed	
Surname	
Forename(s)	

Address (with postcode)	
Date of Birth	
<i>(If applicable)</i> Date of Death	
NHS Number	
4. Type of records to be accessed:	
Please say which records you wish to access (<i>e.g. In patient mental health records, learning disability services records</i>) and if relevant for what dates i.e. records made between July 05 to date)	
5. Name of the applicant (if not the patient as shown on page 1)	
Surname:	First Name:
Address (with postcode):	

--

If you are the patient go straight to number 6 – Declaration

(Please tick the relevant box below)

<input type="checkbox"/>	I am a deceased patient's personal representative
<input type="checkbox"/>	I am a person who has a claim arising from the patient's death

--	--

6. Declaration by applicant:

I, _____ *(name)* **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 on page one under the terms of the Access to Health Records Act 1990.**

(please tick as applicable)

<input type="checkbox"/>	I am acting for the patient and attach the patient's written authority/consent form or other proof of authority <i>i.e. for deceased patient - being Executor of the will/or where no will Letters of Administration/for child relevant birth certificate of the child</i>
--------------------------	---

Signed: _____ **Date:** _____

Please ask someone who knows you, for example an employer, work colleague or personal friend to witness your signature on this form)

Witness' Signature: _____ **Date:** _____

Print name: _____

Address: _____

Relationship to applicant: _____

APPENDIX 2 – AUTHORISATION TO RELEASE RECORDS

Associate Director of Governance and Corporate Affairs
Coventry and Warwickshire ICB

Urgent attention

A request (Under the Access to Records Act 1990) has been received for access to the records of:

Client name:

We enclose the patient's notes for your perusal and authorisation to release copies (which we will process within our department).

Before you do, please identify any information to be restricted. The restrictions only apply in the following circumstances:

- (i) the release of information is likely to cause serious harm to the patient or of any other individual.
- (ii) would identify an individual other than the patient/client who has not given permission for information to be released (other than health professionals concerned)
- (iii) in the case of a child, a patient who is incapable of managing their own affairs, or a patient who has since died, access cannot be given to information which the patient gave in the expectation that it would not be disclosed, or to information obtained as a result of any examination or investigation to which the patient consented in the expectation that information would not be disclosed.
- (iv) in the case of an applicant who has a claim arising out of the patient's death, access can only be given to that part of the records which is relevant to the claim.
- (v) where the patient has died, access cannot be given if the record includes a note made at the patient's request, that access should not be given.

Consultant/Clinician's authorisation to release copies

Signature

Name in Block Capitals

Date

Please return to above address with the attached notes. Thank you.