

# Access to Deceased Patients' Records Policy

## Introduction

### Policy statement

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This policy sets out the expectations for employees who manage access to deceased patients' records and has been produced to provide all staff at Solent View Medical Practice (SVMP) with the necessary information to ensure that they understand the processes regarding access to deceased patients' records in line with appropriate legislation.

Should clarification or any further direction be needed in regard to deceased patients' medical records, then this matter will be discussed with the Data Protection Officer (DPO) Caroline Sims.

### Status

The organisation will aim to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the [Equality Act 2010](#). Consideration has been given to the impact this policy might have regarding the individual protected characteristics of those to whom it applies.

This document and any procedures contained within it are non-contractual and may be modified or withdrawn at any time. For the avoidance of doubt, it does not form part of your contract of employment. Furthermore, 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.

## Guidance

### Overview

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Access to a deceased person's information is not dealt with under the [Data Protection Act 2018](#) (DPA 2018), which incorporates the [UK General Data Protection Regulation](#) (UK GDPR) as these only refer to living individuals and nor is this a subject access request (SAR). It is a request under the [Access to Health Records Act 1990](#).

There are certain individuals who have a right of access to the records of a deceased person. They are:

- The patient's personal representative
- Any person who may have a claim arising out of the patient's death

The [BMA](#) advises that there is still an ethical obligation to respect a patient's confidentiality beyond death and, under section 5 (4) of the Access to Health Records Act (AHRA), 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.

### Requests for access

When a request for access under the AHRA is received, staff at this organisation are to advise individuals to use the template at [Annex A](#).

Requests may be received from coroners, medical examiners, personal representatives, people who have a claim arising from the death of the deceased, the police, researchers, family members or individuals close to the deceased. [NHS England](#) explains that requests to access records following an individual's death can be complex and it is important to consider each request on a case-by-case basis.

Furthermore, the CQC has a legal right to access the records of deceased people when required in the course of its investigations.

### **Responding to requests**

Responding to requests for patients' medical records via the AHRA now lies with the organisation. There is no longer a [requirement](#) for this organisation to print and send copies of the electronic record of deceased patients to Primary Care Support England (PCSE). Electronic records will be retained as detailed in the Records Retention Schedule.

[NHS England](#) advises that when this organisation receives a request for the health record of a deceased individual held by PCSE, it should make a request for the records if a copy is not held. PCSE will send a scanned copy to this organisation. Should a patient have deregistered, PCSE will respond to requests directly.

There are a number of [important issues to consider](#) when responding to a request and, should any doubt arise, guidance is to be sought from the DPO.

[NHS England](#) explains that when disclosure of the record or information in the record is approved, this organisation should generally only disclose what is relevant and necessary to satisfy the request or claim. It should be noted that a personal representative can request all the records and these should be provided with any exempt information removed.

### **Time limits for responding to requests**

[NHS England](#) explains that the time limit for responding to a request is dependent on when the record was last amended.

If no entries, additions or amendments have been made to the record in the 40 calendar days prior to the date of application, the organisation has [21 calendar days](#) from the date of receiving the request to either grant or refuse the request to access the deceased person's record.

If entries, additions or amendments have been made to the record in the 40 calendar days prior to the date of application, the organisation has [40 calendar days](#) from the date of receiving the request to either grant or refuse the request to access the deceased person's record.

### **Charging for access and copies**

The [BMA](#) explains that legislative changes to the Data Protection Act 2018 have also amended the Access to Health Records Act 1990 which now states access to the records of deceased patients and any copies must be provided free of charge.

However, when health information is to be disclosed for the deceased in the absence of a statutory basis, e.g., when a solicitor or insurance company requests a medical report or information to confirm death or an interpretation of what is in the records, this is classed as private work over and above what is already available in the record.

If a request is deemed to be manifestly unfounded or excessive, a reasonable fee may be charged. This organisation will follow the [ICO guidance](#) to determine whether a request is manifestly unfounded or excessive.

### **Refusing a request**

[NHS England](#) explains that if a request is made by a personal representative, then information can only be withheld or redacted from the records if the AHRA permits this. Information can be withheld if:

- The deceased expressly indicated they did not want parts of their record to be disclosed
- The record, if disclosed, would be likely to cause serious harm to another person
- The record of the deceased refers to another individual (who is not a treating healthcare professional)
- The record contains information provided by the patient, or resulting from an examination or treatment, which the organisation has reason to believe the patient would have felt particularly sensitive about and would not have expected to be disclosed.

Additionally, NHS England advises that if someone who has a claim arising from the death of the deceased requests access to the health records of the deceased under the AHRA and they do not have the authorisation of the personal representative, then evidence of the nature of and basis for their claim should be requested.

In such circumstances, this organisation must only disclose information relevant to the claim and this can only be withheld on the grounds permitted under the AHRA (as per the bullet points above).

Should any doubt arise as to what should or should not be disclosed, then advice is to be sought from the Information Governance lead or the DPO.

## **Annex A – Access to a deceased patient’s health record information and form**

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### **Part A: Information**

At Solent View Medical Practice, we appreciate that this is likely to be a distressing time for you and we wish to make the application process to access the health record as stress free as possible.

It is requested that you please complete the relevant sections of this form to enable us to facilitate your request.

### **Rights of access**

Requests for access to health records of patients who are deceased are dealt with through the Access to Health Records Act 1990 (AHRA). There are certain individuals who have rights of access to the health records of a deceased person.

These are:

1. The patient’s personal representative

A personal representative is the executor or administrator of the deceased person’s estate. An example of when we can confirm that the applicant is a personal representative of the patient is when the applicant is, or has been, the executor of the will and they have sent us copies of documents as evidence of this relationship.

2. Any person who may have a claim arising out of the patient’s death

If the application is in respect of a claim arising from a patient’s death, access cannot be given to information that is obviously not relevant to the claim.

The law requires us to ask you for information to determine your right to access the health record. If you are applying to see a deceased relative’s record, we will need to see one of the following:

- Grant of probate
- Letter of administration
- Last will and testament

If you do not have any of these, we need proof of your entitlement to access the record, such as the deceased’s

- Birth certificate
- Marriage certificate
- Death certificate

### **Proof of identity**

It will be necessary to confirm the identity of all parties included on this form. Please supply a photocopy of one document from sections A and B.

- A Confirmation of name
- Full driving licence
  - Passport
  - Birth certificate

- Marriage certificate
- Health and Social Care Information Centre identity badge

**B Confirmation of address**

- Utility bill
- Bank statement
- Credit card statement
- Benefit book
- Pension book

**Limitations to accessing the record or part of the record**

This organisation follows the standard health records retention schedule whereby records are no longer held for patients who passed away more than 10 years ago. We are required to check that any disclosure is subject to the recorded wishes of the deceased person.

We will ensure there is nothing in the record that could harm a third person (such as information about the health of another person) if the record is to be released. If the health record, or part of the health record, is being withheld, we will advise you why but we will not be able to give you specific details.

It should be noted that under the Access to Health Records Act 1990, there is no obligation for us to provide records prior to 1991 unless a doctor feels this will help in understanding any records created after this date.

If the records that you are requesting relate to a period before 1991, we will have to consider the reasons why you are making this request. Therefore, please clearly specify why you require these records.

**About the request**

Access will not be given where a request is non-specific, e.g., you have a concern about treatment or care. You will need to outline specific concerns related to the care leading to a potential claim.

Only information directly relevant to a request will be disclosed.

**Access for other reasons not specified**

If any request does not fall under the categories of people entitled to request the records, then access to a deceased person's records will be decided on a case-by-case basis.

The person requesting the records would need to write to the organisation demonstrating the following:

- They have a valid reason for requesting the records
- They have a legitimate relationship to the deceased
- Access to the records is in the public interest

**How would you like to receive any information we are able to release to you?**

- Electronically as scanned images by email
- Supplied in paper copy form

Paper copies can either be collected or we can post to you by using Royal Mail's Special Delivery. As this will require a signature on delivery, we will telephone you when we have completed this request.

If using the Royal Mail postal option, we will ask you during the call as to whether there is any specific day required for the delivery.

There is an option to view the record with a healthcare professional at the organisation. Is this something that you would prefer?

Yes

No

### **Our fees as set out by the Access to Health Records Act 1990 and Data Protection Act 2018**

Under the Data Protection Act 2018, the organisation will respond to any application within a month and this service will be provided free of charge unless the request is deemed excessive or repetitive, in which case an administration fee may be charged.

### **Part B: Access to a deceased patient's health record form**

**Strictly confidential once completed**

<b>Patient's details</b>			
Surname			
First name(s)			
Any other name known under			
Date of birth			
Date of death			
Gender	Male		Female
NHS number (if known)			
Their address at time of death			
Any previous address during the time they were under our care			

### Your personal details

Please now enter as much information as you can below. This will help us to deal with your request as quickly as possible.

Surname

First name(s)

Your relationship to the deceased

Current address inc. postcode

Telephone number(s)

Email address

If you have an answerphone, are you content that we leave a message if necessary?

Yes

No

### Details of records requested

Please provide as much information, such as any dates (if known) and the reason you require access to the records:

Date range of records required:

From date

To date

Please provide any additional information to support this request:

### Confidentiality

Our duty of confidentiality continues after a patient has died. We will only disclose relevant information about a patient in the following circumstances:

- When disclosure is required by law
  - To help a coroner, procurator fiscal or other similar officer with an inquest or fatal accident inquiry
  - On death certificates, which you must complete honestly and fully
  - When a person has a right of access to records under the Access to Health Records Act 1990 or the Access to Health Records (Northern Ireland) Order 1993, unless an exemption applies
  - When disclosure is necessary to meet a statutory duty of candour
- We require you to provide proof of identity as detailed at Part A of this Annex. Copies will not be made although we will need to see original copies.

Documents are as detailed:

### Declaration

Please note that any attempt to mislead Solent View Medical Practice to obtain patient records may result in prosecution.

Tick the following to confirm:

- I declare that the information I have given on this form is correct to the best of my knowledge and I am entitled to apply for access to the health records referred to above under the terms of the Access to Health Records Act 1990.
- I am the deceased patient's personal representative and attached is confirmation of my appointment (such as evidence of executor of the will/administrator of the estate and evidence of identity).
- I have a claim arising from the patient's death and request access to the health record on these grounds.

Signature

Date



If you have any queries regarding the process or this form then please do not hesitate to contact the organisation.