

Access to Personal Data and Health Records Fact Sheet Leaflet

This factsheet provides a summary of your legal rights in respect of the records we hold about you at The Retreat York. It explains to you what information you are entitled to and what records you would likely be given under various legislation and circumstances.

1. Introduction

When we talk about personal data we often refer to personal information we hold about you in terms of your patient demographics (e.g. name, address, DoB, gender etc.), family details, employment information and education details etc.



When we talk about your physical health we refer to ‘records’ as generally meaning ‘health records’ about you that have been created by your clinician at The Retreat York for the purposes of your health conditions and the planning and receiving of treatment. These records may be held in either a hand written or electronic format and are likely to cover:

- Appointment dates with us;
- Diagnosis information;
- Health reports and assessments;
- Letters/referral letters (either from us or your GP);
- Test/treatment results;

Detailed records are kept by The Retreat York so that we can keep an audit trail of your care pathway and how your treatment is progressing with us.

2. What are my legal rights for accessing my data?



Since 25th May 2016, when the General Data Protection Regulations 2016 (GDPR) 2018 and the Data Protection Act 2018 replaced the old Data Protection Act 1998, individuals now have greater rights in respect of how their data is collected and used.

Under GDPR all individuals have a right to access personal data that is held about them. For access to clinical health records this falls within the remit of the Access to Health Records Act 1998.

This means that you have specific rights regarding information held about you by various organisations such health care facilities/providers, hospitals, GPs, the Police, your employer etc. It means as an organisation we have a legal right to confirm:

- What information we hold about you;
- Why we hold the information;

- Who we may share the information with;
- Where the information came from; and
- An explanation of any technical or complex information including any abbreviations and definitions etc.

You have the right to see the information or to be given copies of the information, subject to a range of exemptions.

3. How do I see or access my data?

You can access your records by either verbally asking to see your records on site with the clinician when you visit us or alternatively by submitting a written information request to us – known also as a Subject Access Request (SAR).



If you want to ask for information, this can be done either at your appointment or over the telephone. If however, this is an inconvenient time for the clinician to deal with the request due to other scheduled appointments or the complexity of the matter then it may be advisable to put your request in writing so that we have a clear indication of the information you actually want from us. Alternatively, you can complete our [Information Request Form](#) available online and send it to us at:

Customer Service Manager
 The Retreat York
 107 Heslington Road
 York, YO10 5BN
 Email address: info@theretreatyork.org.uk

All requests must specifically state:

- The applicable service and clinician who holds the information; and
- The date period for which you are referring to the information;

All requests require proof of identity to make sure we are dealing with the correct person. This will take the form of a photo ID (e.g. a copy of your passport or driving licence) and a utility bill to verify your home address details. However, if the clinician knows you well then proof of ID will not be essential.

4. Can a third party act on my behalf if I lack the capacity to do so?



Yes. A third party (i.e. a solicitor, parent, carer etc.) can act on behalf of you if you lack the capacity or confidence to do so but you must have signed an authorised form to give them permission to do so. Before any information is released this authorised form and any relevant ID from you, where necessary, will be required to verify your request and your identification. This will consist of one photo ID (i.e. a copy of your passport or driving licence) and one form of ID to confirm your home postal address (i.e. a utility bill, a bank statement etc.)

For children under 12 years old, only the parent or guardian who has legal responsibility for the child will be able to submit a request for information. We are not able to deal with any parents or individuals that do not hold full parental or guardian responsibilities.

For those who have delegated Power of Attorney status to act on behalf of an incapacitated person, relevant court documentation will be required to be attached to the request to clarify the assigned legal powers of the individual.

5. Can I ask for everything which is held on file?



No. We will only be able to provide information that is directly about you. This means that any information that has been provided to us in confidence is not disclosable unless we have their written consent to disclose it. It is very important to remind you that health records can contain a variety of details about you and other third parties. Where information relates to a third party information and consent has not been forthcoming or it is not appropriate to ask their consent then the information will be redacted or blocked out or in the case of complete reports withheld in their entirety where we have no legal obligations for disclosure. Where legal obligations do exist the remainder of the records will be released to you.

If for some reason, we cannot contact the relevant people involved to ask their permission for disclosure then we may make a decision as to whether it is advisable and ethical to share the information with you. Sticking to the law each request will be assessed on a case by case basis.

Additionally, in exceptional circumstances, information may be withheld where we feel the disclosure about a certain point may cause serious harm either to the physical or mental health to you or to another person. If this applies, you will be advised why we have decided to keep information from you.

Other reasons why we might withhold information from you include:

- The records are subject to legal privilege i.e. the record or information contains legal advice between us and our legal advisor;
- There is a restriction or Court Order in place; or
- The law prohibits us from disclosing the information

Do note however, that requests considered manifestly unreasonable or repetitive may also be refused.

6. Do I have to pay a fee to get a copy of my records?



No. There is no charge either under GDPR or AHRA but if the request involves a large volume of records then we may ask for the printing and postal charges. If in, exceptional circumstances, a charge is applied, then you will be advised of this in advance before the request is processed to determine if you still want to continue with the request.

7. How long will it take for me to get the information?



All requests for information will be processed within 1 month i.e. 30 days from the date we receive your initial request. This may be extended by a further 2 months where the request is complex or you have submitted multiple queries. If this applies, you will be advised in due course of the completion date. In all cases, The Retreat York will aim to respond to all requests asap and before the 30 day limit.

8. What if I think some of the information I have received is incorrect and I wish to rectify, delete or amend the information you hold?



Under GDPR, you have a right to rectify (Article 16), erase, delete (Article 17) or object (Article 21) to any information we hold about you if you feel it is incorrect.

You can do this by either writing to us or completing our form – please see the form online.

You will need to identify what information is incorrect, why you feel it is incorrect and whether you wish for it to be amended or deleted.

As an organisation we will always endeavour to respond to all amendment and deletion/erasure requests within 30 calendar days (i.e. 1 month) or sooner wherever possible.

However, do be aware that some of the information in your records may be a professional opinion or judgement of your medical condition which would not be deemed incorrect or inaccurate. They are in fact a professional opinion by your clinician at a point of time in your health care. Even if your diagnosis is proved wrong at a later date the old record would not be removed.

As a result we would never delete, erase or update factually correct comments on your health record as these indicate the reasons why such decisions were made at the time of your care and treatment. What we can do is add a note to your record to state that you disagree with the views that have been expressed. If you still unhappy about this then you can complain to our Complaints Team in the first instance or speak to the Information Commissioner's Office if you still remain unhappy.

If for some reason the clinician who has been dealing with your request agrees that the information is incorrect then your record will be updated accordingly.

If for some reason any demographic data held on file is incorrect e.g. you're date of birth or your home address or name then this will be updated immediately once we have received written confirmation to verify it.

9. How long will you keep records about me?

All mental health records are normally kept for 20 years from the last time we last seen you or were discharged from the service. This will be reduced to eight years if you die. All records will be kept longer where it is an ongoing case.

If you are a patient without any mental health related requirements then the retention period will be 8 years.

There are some exceptions to this. Referrals and temporary appointments will be kept only for 3 years

10. What if I think some of my information is missing from my request?

If any information is missing from your request then you will need to confirm what this is so that the clinician or officer responsible for you can make the appropriate enquiries and get back to you with the appropriate information.



11. What if I want to restrict who views my data?



We will only be able to restrict your health data where it is appropriate to do so. If we do restrict any part of your health record following a request from you then do note that this may limit the service provision you receive from us.

However, we will not be able to restrict any part of your record where it is in respect of a legal obligation i.e. the information is required in respect of detecting crime, apprehending an offender or detecting a fraud or tax matter or a Court Order request, although each request will be judged on its own merits first before disclosure is granted. Further information about this is outlined in our Privacy Notice at: www.theretreatyork.org.uk

12. What if my employer or insurer wants access to my health information?

If your employer or insurer wants health information about you then it will your responsibility to ask the clinician for a medical report. They will not be able to do this without you. In this situation your employer or insurance company will not usually require full access to your medical health records. If however, your employer wants to approach us directly then they will require an authorised signed form from you that gives your clinician consent to do this. This type of access will be under the Access to Medical Reports Act 1988.



13. What if I want to see records in relation to a deceased person e.g. my partner or mother?



When an individual dies their personal details and health records still remain confidential. There is no legal entitlement in law for access to deceased records under the Access to Health Records Act 1990.



Access to deceased '*health records*' under the Access to Health Records Act 1990 (AHRA) can only be provided at the discretion of

the health professional and where there is clear justification do so where the individual requiring access:

- Is the legally appointed personal representative for the deceased individual's estate; or
- Where a person has a claim arising from the individual's death.

If you are the deceased's personal estate representative then you will need to be able to demonstrate that you are the responsible person for the deceased's personal affairs such as their property and bank accounts. This will require you to submit along with your request the correct legal paperwork to support this.

In terms of claims, the person will need to clarify what the claim is, why it is connected to the deceased individual and what outcome they expect to achieve from the request. Typical examples of when a claim may arise involving a deceased individual may be due to medical negligence or a misdiagnosis of treatment for a patient or an inheritance problem. All such disclosures will need to be in the interests of what the deceased wanted or be required to support the legal interests of justice. Each case will be assessed on a case by case basis by our Caldicott Guardian where this applies.

It is worth emphasising here that if the deceased individual advised us not to disclose any information in respect of a matter then depending on the circumstances of the request we may be required to honour this. In all other cases, the balance of benefit to be gained by the disclosure to the family, for example of a hereditary or infectious condition, may outweigh the obligation of any confidentiality owed to the deceased.

14 How do I make a complaint if I am unhappy about my initial response?



If you are unhappy with the initial response you receive from us you can submit a complaint to us in writing at the following address:

Customer Services Manager
The Retreat York
107 Heslington Road
York, YO10 5BN

The Retreat York will endeavour to respond to your complaint/appeal immediately and no later than 1 month i.e. 30 calendar days.

We ask that you submit all initial complaints to us before sending them to any independent bodies for a review.

15. What if I am still unhappy after my complaint has been looked at and finalised?

If you still remain dissatisfied with our service you can submit a complaint to the Information Commissioner's Office (ICO) to ask for independent review of your request. The ICO can be contacted at the following address:



Information Commissioner's Office
Wycliffe House, Water Lane
Wilmslow,

Cheshire, SK9 5AF

Telephone: 0303 123 1113 (9am to 5pm Monday to Friday)

Email: Online form here: <https://ico.org.uk/global/contact-us/email/>

Website: www.ico.org.uk

They will issue a decision notice on the action they deemed should be taken in respect of your case.

Please note:

- The above guidance is only applicable to England and Wales law.
- This guide contains general information and is in no way legal advice to you. If you have any further queries about the above content then please contact a legal professional for further support.



References:

- Information Commissioners Office (ICO): www.ico.org.uk
- General Data Protection Regulations 2016: www.gdpr-info.eu
- Access to Health Records Act 1990: www.legislation.gov.uk/ukpga/1990/23/contents
- British Medical Association (BMA): www.bma.org.uk
- General Medical Council: www.gmc-uk.org
Please review General Medical Council: Confidentiality: Good practice in handling patient information at: <https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality>
- Information Governance Alliance: The General Data Protection Regulations - What's new. London, Information Governance Alliance; 2018.

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Data Protection Officer

This factsheet is available in large print on request.