

## Protocol for Access to Ophthalmic Patient Records

### The legislation

GDPR and The Data Protection Act 2018 apply to living “data subjects” and govern how personal data is used by organisations, businesses or the government. They give every living person, or an authorised representative, the right to apply for access to their health records.

The Access to Health Records Act 1990 governs the access to health records of deceased patients.

### Who can access patient records?

Two categories of people are allowed to have access to a patient's health records. These are:

The patient; and

An applicant acting on behalf of the patient, including someone authorised in writing by the patient or a person appointed by the court to manage the affairs of patients incapable of doing so for themselves.

### How to request access to your records

If you wish to obtain a copy of your health records you can do this verbally or in writing. This is known as a Subject Access Request (SAR). A SAR can also be made to any part of our organisation (including by social media) and does not have to be to a specific person or contact point. We may require more information from you to confirm your identity prior to processing the request.

### How to request access to records on behalf of someone else

We have duties under confidentiality law to ensure the patient concerned has consented to their records being accessed. Before disclosing records to any third party we must be satisfied that the patient has provided us with appropriate authority. If you are using an authorised representative to access your records, you need to be aware that in doing so they may gain access to all health records concerning you, of which not all may be relevant. If this is a concern, you should inform your representative of what information you wish them to specifically request when they are applying for access.

If you wish to make an access request on behalf of someone else, we need to know that you have their permission to do so. A note signed by the person concerned consenting access is required. If they are incapable of providing this due to physical or mental illness, a copy of Power of Attorney or Welfare Guardianship documentation would be required.

Where a parent or guardian applies for access on behalf of a child patient, the data controller must be satisfied that the child patient has consented to the application; or the child patient is unable to understand the nature of the application, and giving access to the applicant would be in the best interest of the child. In Scotland, the law presumes that a child aged 12 years or more has the capacity to make a SAR. It does not follow that just because a child has capacity to make a SAR, they also have capacity to consent to sharing their personal data with others – as they may still not fully understand the implications of doing so. If we are confident that the child can understand their rights, we will respond to the child rather than the parent or guardian.

### Access to records for deceased patients

Access to the records of a deceased patient will be given to the patient's personal representatives (i.e. executor or administrator) where there is a claim arising after the death of the patient. It should be noted that relatives of someone who has died have no right of access to the deceased's records unless they are their personal representative e.g. administrator or executor. If you have a claim as a result of a person's death, you can only see information that is relevant to the claim. The grounds for making the claim must be clearly stated on your access request.

### **Fees for accessing health records**

GDPR and The Data Protection Act 2018 make it clear that there should not be a fee for the majority of SAR for health records. Where a SAR is manifestly unfounded or excessive we may charge a reasonable fee for the administrative costs of complying with the request. An example of an unfounded or excessive request would be if we received repeated requests for the same data that had already been provided free of charge.

### **Time scales for accessing records**

Once the data controller has all of the required information, and fee where relevant, your request should be fulfilled within 1 month. In exceptional circumstances where it is not possible to comply within this period, we will inform you of the delay within 1 month of receiving your SAR and give a time scale for when your request will be met.

When making your request for access, it would be helpful if you could provide details of the time periods and aspects of your health record you require. This is optional, but it may help save practice time and resources and reduce the cost of your access request.

Once all of the relevant information has been collated, we can arrange an appointment with the data controller, or the Optometrist, to view the records and explain them to you. If you the patient, or your applicant considers the records are incorrect, misleading or incomplete, you may request for them to be amended. If the Data Controller or Optometrist disagrees with the proposed amendment, they will write to you within 1 month of receiving the request to explain why. You have the right to have a note of the matter(s) you believe are inaccurate kept within the record.

### **Refusing access to records**

In some circumstances, The Act permits the data controller to withhold information held in your health record. These rare cases are:

Where it has been judged that supplying you with the information is likely to cause serious harm to the physical or mental health or condition of you, or any other person, or;  
Where providing you with access would disclose information relating to or provided by a third person who had not consented to the disclosure, this exemption does not apply where that third person is a clinician involved in your care.

### **Complaints**

If you have any complaints about any aspect of your application to obtain access to health records at this practice, you should first discuss this with the data controller or Optometrist concerned. If you are still dissatisfied, you can make a complaint through our NHS complaints procedure. If required, a copy of our complaints procedure can be provided to you on request. If following this procedure, you remain unhappy; you can take your concern to the Information Commissioner's Office (ICO):

The Information Commissioner's Office – Scotland  
Queen Elizabeth House  
Sibbald Walk  
Edinburgh  
EH8 8FT

Telephone: 0303 123 1115

Email: [Scotland@ico.org.uk](mailto:Scotland@ico.org.uk)

Website: [www.ico.org.uk](http://www.ico.org.uk)