

## Subject access & health records

---

Data Protection Act 1998  
**Compliance advice**

### ***Subject access to health records***

The Data Protection Act 1998 was implemented on 1 March 2000. Although there are periods of *transitional relief* during which certain provisions of the new legislation need not be complied with, the implementation of the new legislation will have an immediate impact in respect of subject access to health records. (For more information about the transitional provisions see 'The Data Protection Act 1998 - An Introduction' available at [www.dataprotection.gov.uk](http://www.dataprotection.gov.uk) under legal guidance of the 'guidance & other publication' section.)

#### **What is 'subject access'?**

The right of subject access allows the individual to gain access to personal data of which he is the subject. Typically this will involve supplying an individual with copies of records relating to him when asked to do so. For general information about the right of subject access see 'The Data Protection Act 1998 - An Introduction'.

#### **What is a 'health record'?**

A 'health record' is defined in the 1998 Act as being any record which consists of information relating to the physical or mental health or condition of an individual, and has been made by or on behalf of a health professional in connection with the care of that individual. (See Appendix 1 for the definition of 'health professional'.) The definition of a 'health record' could apply to material held on an X-ray or an MRI scan, for example. This means that when a subject access request is made, the information contained in such material must be supplied to the applicant within the fee structure described below.

It is clear, therefore, that many of the records being held by NHS Trusts, surgeries and other health care institutions will constitute 'health records' and will therefore fall within the scope of the 1998 Act's subject access provisions.

#### **What about the Access to Health Records Act 1990?**

This piece of legislation formerly gave individuals a right of access to manual

health records – i.e. to the sort of non-automated records that the Data Protection Act 1984 did not apply to. However, the Access to Health Records Act 1990 has now been repealed except for the sections dealing with requests for access to records relating to the deceased. Requests for access to records relating to the deceased will continue to be made under the Access to Health Records Act 1990. However, requests for access to health records relating to living individuals, whether the records are manual or automated, will now fall within the scope of the Data Protection Act 1998's subject access provisions and must be dealt with in the manner stipulated in that Act.

## **How much can be charged for granting subject access?**

- A maximum fee of £10 may be charged for granting subject access to health records that are being automatically processed, or that are recorded with the intention that they be so processed. In effect, this means that only £10 may be charged for granting access to the sort of records that the Data Protection Act 1984 applied to.
- A maximum fee of £50 may be charged for granting subject access to manual records, or to a mixture of manual and automated records, where the request for subject access will be granted by supplying a copy of the information in permanent form. It should be noted that there is no express provision for any fee to be charged for copying or despatching copies of records. However, the £50 chargeable fee will allow for some of the costs incurred by granting subject access to be recovered.
- No fee may be charged where the subject access request is to be complied with other than by supplying a copy of the information in a permanent form – i.e. by allowing the applicant to inspect the record. This provision only relates to requests for access to non-automated records at least some of which was made after the beginning of the period of 40 days immediately preceding the date of the request. This provision broadly replicates the provision of the Access to Health Records Act 1990 that, in effect, allows patients to look at recently created records for free.

**\*Important Note\*** The fee for granting subject access to manual health records had been due to reduce to £10 on 24 October 2001. The higher fee was originally by way of transitional relief, allowing for the fact that under the Access to Health Records Act 1990, (whose substantive provisions were incorporated into the Data Protection Act 1998), much higher fees could be charged. However, the government announced on 27 September 2001 that the £50 fee would continue 'for the time being'. This means that data controllers can continue to charge a maximum fee of up to £50 where a copy of the information contained in manual health records is provided in a

permanent form. This continuation is provided for in The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) (Amendment) Regulations 2001. It was also stated that the Government is committed to continuing discussions with key interest groups and to working closely with the Information Commissioner with the aim of achieving a long-term solution. See 'Press Releases' on the Lord Chancellor's Department website for more information ([www.lcd.gov.uk](http://www.lcd.gov.uk)).

## **What other information do I have to give to the data subject?**

- a description of the data;
- a description of the purpose/s for which the data are being or are to be processed;
- a description of the recipients or classes or recipients of the data – i.e. persons to whom the data are disclosed

The data subject must also be given;

- any information available to the controller as to the source of the data;
- an explanation as to how any automated decision taken about the data subject has been made.

## **Appendix 1**

### **Who is a 'health professional'?**

In the Data Protection Act 1998 "health professional" means any of the following;

- a) a registered medical practitioner (a "registered medical practitioner" includes any person who is provisionally registered under section 15 or 21 of the Medical Act 1983 and is engaged in such employment as is mentioned in subsection (3) of that section.)
- b) a registered dentist as defined by section 53(1) of the Dentists Act 1984,
- c) a registered optician as defined by section 36(1) of the Opticians Act 1989,
- d) a registered pharmaceutical chemist as defined by section 24(1) of the Pharmacy Act 1954 or a registered person as defined by Article 2(2) of the Pharmacy (Northern Ireland) Order 1976,
- e) a registered nurse, midwife or health visitor,
- f) a registered osteopath as defined by section 41 of the Osteopaths Act 1993,
- g) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994,
- h) any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 for the time being extends,

- i) a clinical psychologist, child psychotherapist or speech therapist,
- j) a music therapist employed by a health service body, and
- k) a scientist employed by such a body as head of department

**13 Nov 01 V2.1**