

Access to Health Records

KEY POINTS

- Whenever a doctor or health professional sees you, they will update your health record with information about your condition and treatment.
- If you are, or have been, in touch with mental health services you may have separate records held by the mental health trust as well as your GP.
- You have a right to see your records under the Data Protection Act 1998. However, medical professionals holding your records have the right to withhold information if it may harm your physical or mental health.
- If you want to access your health records you should write to the relevant body holding them who should release them within 40 days.
- Other people, such as an employer or solicitor, can access health information only if you give your written consent.
- If you believe that something on your health records is wrong you do not have the right to change it but you can write to the record holder and request that a change is made.
- Family members may want to see the health records of a relative who has died for assistance with an inquest or complaint. The health records of someone who has died are treated with the same level of confidentiality as those of a living person but they can be accessed if you are the "personal representative" or have a claim resulting from the patient's death.

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1. How are my health records currently managed?

Whenever a doctor or health professional sees you, they will update your health record with information about your condition and treatment. They may be in a computerised or handwritten/manual form and include a record of the outcome of appointments, diagnosis, reports, letters and results. Health Records from mental health trusts may also include care plans and information about any time spent in hospital. This detailed record is normally kept locally by the person in charge of your treatment¹. This will mean that records relating to your GP visits will be held at the practice but you will also have detailed records held by the trust. Key information such as referral letters, diagnosis, reports and results should be shared between health professionals. There are plans to formally link your records between local health bodies electronically².

A **new system** is currently being implemented where people can choose whether, for basic information such as major health conditions and treatments, to be added to a central database which can be accessed by health professionals across the country³. This is known as your "Summary Care Record" and will be phased in across NHS trusts over the next few years. This means that, for example, if you have an accident and are taken to hospital or transfer to another GP surgery, basic health information can be accessed immediately. Health professionals must first check with you before accessing your summary record card and the scheme can also be opted out of entirely⁴. For more information about this please go to www.nhscarerecords.nhs.uk or call NHS care records information line on **0845 603 8510**.

Why might I want to see my health records?

There are a number of reasons why people want to see their health records. Among the most common are - you want to see what health professionals have written about you as this will be read by anyone treating you in the future; you want to know your diagnosis; or you want to make a complaint.

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2. How do I go about seeing my records?

You have the right to see your health records under the Data Protection Act 1998 (Section 7). If you want to see your health records you need to write to the "record holder" at the practice or trust which has the records you want to see. You should include your name, address, date of birth and any other information

which would help locate your file. If you do not want to see all of your records you should state the dates you want to see. It would be helpful to mention that the request is made under Section 7 of the Data Protection Act 1998, and to send the letter by recorded delivery. You do not need to give a reason for making an application. You may then be sent a form asking for additional information and confirming your authorisation.

There are slight variations between trusts in how records are kept. It should be enough to address your letter to the "record holder" or "health records department". However, to find out exactly who to write to it might be best to contact your local Patient Advice and Liaison Service (PALS). If you have any problem finding out how to get your records contact the Rethink Advice & Information Service who may be able to help.

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3. Can anyone else see my health records?

Someone other than the patient (e.g. a solicitor) may make an application to access health records on their behalf in the same way a patient would. Due to the common law rules on confidentiality, a data controller will not release records to third parties without express consent⁵. When individuals want to access health information for the purposes of employment or insurance they can only access a medical report provided by the medical practitioner and cannot access your entire record. They must also have your consent first⁶. If a person lacks capacity then common law on confidentiality would mean that a person appointed to deal with their affairs on their behalf (for example someone with lasting power of attorney for welfare) could access health records⁷. For further information and advice on this issue contact the Rethink Advice & Information Service.

What are the rights to access the health records of someone who has died?

The health records of someone who has died are treated with the same level of confidentiality as those of a living person. Access to these records is covered by the Health Records Act 1990 which states that their "personal representative" or anyone having a claim resulting from the death (not only relatives) has the right to apply for access⁸. The personal representative means that you are responsible for administering or executing a person's estate. This can also include closing down bank accounts or attending to other administrative matters needed following the person's death.

An application should be made to the record holder giving enough information to identify the correct records. You must also include details of your right to make the application such as stating that you are the "personal representative". Rethink Mental Illness are aware that family members have difficulty accessing this information so it might help to apply for a "grant of probate" or "grant of letters of administration" from the Her Majesty's Courts first. For more information about this you could go to www.hmcourts-service.gov.uk or call 0845 4568770.

When someone dies unexpectedly, the coroner has the right to access their health records. They will usually access them in preparation for the inquest into the person's death. In some cases, the police will also access the records.

Access to a child's health records

At 16, a young person is considered an adult in terms of consent to medical treatment and has a right to confidentiality. A person with 'parental responsibility' (Children's Act 1989) has the right to access a child's health record if the child is

under 16. However, according to the General Medical Council information should only be disclosed without the child's consent if the child does not have the capacity to consent and it is in the child's best interest⁹. A person under the age of sixteen who has been subject to medical investigation under the expectation of confidence should have their confidence respected.

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4. Charges

If your records have been updated in the last 40 days then there is no charge to access them.¹⁰ In other circumstances the maximum fee for providing an electronic copy of your record is £10. If records are wholly or partly manual and need to be photocopied the record holder can charge up to £50 and cannot make a profit. Charges are for copying and posting and the record holder is not permitted to make a profit¹¹.

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5. When will I receive the records?

The application can only be acted upon if the record holder has enough information to identify you and find your file. Once all the information has been provided the record holder has a maximum of 40 days to release the information¹². You should be informed if it is not possible to send your record within this time.

Can I inspect my medical record directly?

You can apply for access to your total health record, bearing in mind that amendments or deletions may have been made between making the application and receiving the record.

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6. Can any information be withheld?

Yes. Any information that 'would be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person' can be withheld¹³. The record holder should be able to justify a decision to withhold information and if you believe you have not been provided with a good enough reason then you could put in a complaint to the body holding your information or contact the "Information Commissioner" on the contact details below.

In practice, the notes are not always complete when you get them. Sensitive information may be removed or blocked out. If you are concerned that information is missing you should contact the record holder.

What if my records are not supplied or if there is a delay?

If the record holder is refusing to provide the information you could make a complaint or contact the "Information Commissioner". If you continue to have difficulties, the Rethink Advice & Information Service may be able to help.

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7. What if I believe information on my record is incorrect?

Principle 4 of the Data Protection Act¹⁴ says that "Information shall be accurate and....kept up to date". However, according to the Information Commissioner's Office, if you disagree with a clinical opinion the information should not be

amended but a note added which states the individual's correction¹⁵. You should write to the record holder to tell them what you think is wrong with an explanation of your reasons. It's a good idea to send this letter by recorded delivery.

If you are still not happy with the information contained in your health records you can also complain to the Information Commissioner but they are unlikely to change or delete medical information because it is based on a medical opinion. However, if you remain unhappy with the information on your records you can make an application to the county court who can rule that data be destroyed, blocked or deleted if they are satisfied it is inaccurate¹⁶

You could also use the NHS complaints procedure. Rethink Mental Illness's factsheet on '**Complaints About the NHS or Social Services**' may be useful to you which can be downloaded from the www.rethink.org/factsheets or accessed from the Rethink Advice & Information Service. Our contact details are to be found at the bottom of the factsheet.

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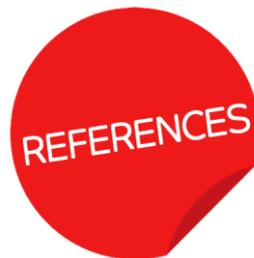


The Commissioner's Office provides information on protecting and accessing your records.

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel - 01625 545700

Email - mail@ico.gsi.gov.uk

Web - www.informationcommissioner.gov.uk



¹ <http://www.nhscarerecords.nhs.uk/detailed/accessed> 27/05/11

² As above

³ <http://www.nhscarerecords.nhs.uk/summary/27/05/00>

⁴ As Above

⁵ Information Commissioners Office, Technical Guidance Note, "*Subject Access to health records by members of the public*" 11.03.10

⁶ Access to Medical Reports Act 1988, Section 3(1)

⁷ Information Commissioners Office, Technical Guidance Note, "*Subject Access to health records by members of the public*" 11.03.10

⁸ Access to Health Records Act 1990, Section 3(1)

⁹ General Medical Council: *0-18 years. Guidance for All Doctors*; GMC 2007

¹⁰ Access to Health Records Act 1990, Section 3(4)

¹¹ Access to Health Records Act 1990, Section 3(4)

¹² Data Protection Act 1998, Section 7 (10)

¹³ Data Protection Act 1998, Section 10 (1)

¹⁴

http://www.ico.gov.uk/for_organisations/data_protection/the_guide/the_principles.aspx (Accessed 27/05/11)

¹⁵ Information Commissioners Office, Technical Guidance Note, "*Subject Access to health records by members of the public*" 11.03.10

¹⁶ Data Protection Act 1998, Section 14 (1)

The content of this product is available in Large Print (16 point). Please call 0300 5000 927.

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Rethink Advice & Information Service

Phone 0300 5000 927

Monday to Friday, 10am to 1pm

Email advice@rethink.org

The Rethink Advice & Information Service welcomes your feedback on whether this information was helpful to you. You can provide feedback in the following ways:

By email: feedback@rethink.org

By post:

Rethink Advice & Information Service
Rethink Mental Illness
89 Albert Embankment
London SE1 7TP

By telephone: 0300 5000 927



**Leading the way to a better
quality of life for everyone
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