Procedure Name: 012 Procedure for Managing Subject Access Requests
Procedure initiated by: NHS Greater Glasgow & Clyde Health Records Committee
Date Approved: 30 July 2009
Date last Amended: February 2012
Date of Next Review: 30 July 2013
Related Policies and Procedures:
1 Opening Statement

There are a number of legitimate requests made to NHS Greater Glasgow & Clyde for access to health records particularly under Data Protection Act 1998 and Access to Health Records Act 1990 by patients and their relatives, solicitors, courts and police. The Data Protection act relates to all records whether manual or electronic for living individuals whereas the Access to Health Records Act now only applies to deceased patients.

This procedure sets out the NHS Greater Glasgow and Clyde procedures for managing these requests.

2 Who can make an application for access

Application for access may be made by:
- the patient (including a child usually 12 years or over where HCP considers he/she is old enough to understand the nature of the application);
- the parent/guardian of a child under 16 whose signed consent is included with the application;
- the parent/guardian of a child who is unable to understand the nature of the application;
- a person whom the patient has authorised in writing to apply;
- a person who is appointed by a court to manage a patient’s affairs, if the patient is incapable of this;
- the personal representative of a deceased patient or any person who may have a claim arising out of the patient’s death.
- the police in connection with the prevention of crime or the apprehension or prosecution of offenders.

3 Responsibility for Processing Requests

NHS Greater Glasgow and Clyde has nominated person(s) responsible for ensuring that all requests are logged and processed within the defined timescales, liaising with the appropriate parties involved.

In acute and mental health services, including community mental health teams, Site Health Records Managers and Specialist Site Health Records Managers are responsible for the administration of Subject Access Requests. In community based services such as Podiatry and Community Physiotherapy, this responsibility falls to CHPs and CHCPs, however advice and guidance will be provided by local Health Records Managers.
4 Receiving and verifying applications within Health Records Depts.

- Requests for access to Health Records will be directed to the Legal team or appropriate officer who will put the recognised procedures into operation. The Health Records Manager will co-ordinate and monitor progress of the request where required and will advise on complexities or ethical concerns liaising with Information Governance Manager if necessary.

- After receiving an initial request for access to records usually in person or by telephone, an application is sent to the applicant to complete.

- Where the request is in the form of a letter from a Solicitor, Claims company or similar and has a completed patient mandate attached, there is no need to send an application form.

- To verify that the application is genuine, the applicant will be asked to provide a countersignature who can be contacted to verify their identity.

5 Authority to Disclose

The Healthcare Professional (HCP) must consider the request and determine whether full, limited or no access should be given. Where there are several specialties involved the clinician involved most recently should undertake this. Information can be withheld if the HCP considers that it could seriously harm the physical or mental health of the patient or a third party. Third party information must not be disclosed without that person’s consent. A third party could be a relative or neighbour but not another health professional. Reasons for non-disclosure must be documented by HCP, as the patient can appeal against this decision.

After the record has been considered by the HCP(s), it will be returned to Legal Team or authorised officer for reviewing and copying as advised by the Check List. Any third party or sensitive information will be edited at this stage.

6 Timescales

NHS Greater Glasgow and Clyde will endeavour to respond within 21 days but no later than 40 days from receipt of all information (eg ID check).

7 Fee

NHS Greater Glasgow and Clyde will charge an access fee of £10 plus copying charges of 30p per photocopy up to a maximum of £50. This relates to a single application and can cover requests for records held on several sites. However where a patient only wishes to view their electronic record on screen only the £10.00 access fee will be charged and this fee is not applicable the record had been added to within the previous 40 days. Copy X-rays will be charged at £10.00 whether the format is disk or x-ray film.

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Providing Copies to patient or authorised person

- Copies of records rather than originals must be provided. It is good practice that copies can be identified as being provided through this access process in the event that they are subsequently passed to an unauthorised party. Copies being sent externally should be copied on coloured paper.

- The authorised copy of the Record will be provided to the requester once the record has been copied, checked and an Invoice Credit Request Form sent to the Finance department. The requestor will be sent the copies along with a letter advising that the Finance Department will send an invoice for payment directly to the requestor. Where records are being sent to the requestor staff must adhere to the confidentiality procedure.

Recording of the process

All subject access requests will be recorded and kept updated until the request can be closed. Requests should be retained along with HCP checklist for one calendar year. Information on the number of requests processed both within and outwith the timescale are recorded as part of each Health Records Departments Key Performance Indicators.

Inaccuracies in Records

A patient may ask for inaccurate, misleading or incomplete information to be corrected. If the HCP agrees that the information is inaccurate they can make the correction. If not, a note signed and dated by the patient recording their disagreement should be placed in the relevant part of the record. The disputed information should be highlighted and the amended information attached to the file close by.

Access Requests relating to deceased patients

Under the Access to Health Records Act 1990, these may only be disclosed to the deceased patient’s personal representative or anyone who has a claim arising from the patient’s death. The Legal Clerk and/or the HCP need to satisfy themselves of the link between the requestor and the deceased.

Requests made under a Court Order

Requests from the court are received as part of a Specification of Documents and must be complied with and acted upon promptly (normally within seven days). Health Records departments may receive advanced notice that solicitors have made a request to the court. It is good practice to inform the HCP that a Specification has been received as there are procedures which allow for highly sensitive materials (eg in cases of rape or child protection) to be sent securely to the Clerk of the Court rather than a solicitor and HCP may wish to request this. Scottish Government guidance CEL 11 (2007) instructed hospitals and the courts that copy records rather
than originals will be provided in the first instance. The crown however reserves the right to request the original records in certain circumstances. The pages of the Health Record must be numbered prior to copying, checked and a detailed Inventory of the photocopied documents prepared. This should be sent along with the completed Specification of Documents form and the copy record to the address stated in the specification, which may be the Court or may be a named solicitor.

13 Requests by the police or Government Agency (eg War Pensions)

In order to pursue enquires, the police may request to access a patient's record. The request should be made in writing and should be specific as to what part of the record or to what period of time they wish to access. They should not be given a copy of the complete record unless specifically requested. If the request is accompanied by a signed original mandate from the patient, the request should be granted. Otherwise the request must be authorised by written legible instructions from the Procurator Fiscal. Only the relevant part of the record requested should be made available as a copy. An Application Form for Access to Health Records is not required. However if no previous written request has been received or if there is an urgency in the personal data being made available, then the officer making the request should complete a Data Protection Act 1998, Section 29(3) form. It is then down to the Healthcare Professional to decide whether or nor to release the requested information. Where there are concerns, advice may be sought from Health Records Managers and in complex cases the Caldicott Guardian.

14 Requests for CCTV Coverage

Requests for CCTV coverage must be dealt with under the CCTV and the Data Protection Act 1998 Guidance Notes for NHS Scotland Organisations. A CCTV specific application form must be used for any subject access request. The Information Governance Manager should be contacted for further advice.

15 Definition of Terms & Acronyms

HCP Healthcare Professional
CHP Community Health Partnership
CCTV Closed Circuit Television

16 Reference (National/local guidelines, standards and legislation)

Scottish Government – Information Governance Guidance Note
Handling Requests for Access to Personal Health Data

17 Links (related policies and guidance) can also include web links if applicable


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Access to Health Records Act 1990

Caldicott Principles
www.confidentiality.scot.nhs.uk/caldicott.htm
www.elib.scot.nhs.uk

“Protecting Personal Health Information” – Information Guide for Patients
(Produced by ISD)

“Confidentiality – It’s Your Right”
(Produced by NHS Scotland)

“Confidentiality – A guide for young people under 16” (Produced by NHS Scotland)

“How to see Your Health Records”
(produced by NHS Scotland)

Policy: Local IT Security

Health Rights Information Scotland (HRIS)
http://www.hris.org.uk

Scottish Government – Information Governance Guidance Note
Handling Requests for Access to Personal Health Data