# **DRS KOH AND TRORY**

ACCESS TO HEALTH RECORDS POLICY

## Reviewed : Date of last review April 17

## Date of next review April 18

**Purpose :** It is the Policy of Drs Koh and Trory to protect the information held within the surgery. The high level policy and the supporting item policies provide the guidance for all staff on security and confidentiality of information.

**Policy Statement :** It is the responsibility of all staff to ensure they are working to the most up to date and relevant policies and procedures. By so doing, the quality of the services offered will be maintained and the chances of information security and confidentiality being breeched will be minimised.

## Access to Health Records

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DRS KOH AND TRORY

ACCESS TO HEALTH RECORDS

1. Introduction

The Data Protection Act 1998 gives patients a right of access, subject to certain exemptions, to their health records both paper form and those held on computerised systems. Drs Koh and Trory respect the rights of individuals to have as much information as possible about their diagnosis and treatment, and will ensure that the Act is fully implemented.

This policy has been drawn up to help staff respond to requests for health records. It covers all requests for access to records that relate to care received from Drs Koh and Trory.

Without detracting from the need to record what is in the best interest of patients, all health professionals are advised to compile records on the assumption that they will be accessible to patients.

2 Informal Access to Health Records

The practice encourages informal, voluntary arrangements whereby patients or those caring for them, during or at the end of their treatment, are able to ask what has been recorded about them during that episode of care.

Patients are allowed to see this part of their records at the discretion of the appropriate health professional. The appropriate health professional is the person principally responsible for their clinical care and often will be a medical practitioner but may also be a nurse, healthy adviser, dietician, occupation therapist of any other employee of the practice.

Informal access is subject to the non-disclosure of information, which might cause serious harm to the patient or may identify third parties (see section 3.2).

If the patient wishes to have photocopies of their records, they should apply for formal access under section 3.

3 Formal Access to Health Records

If a member of the staff is asked by a patient (or their representative) to provide them with access to their records in compliance with the Data Protection Act the following points should be noted:

* The individual has a right to inspect and to receive a copy of the record, and to be given an explanation of any terms, which are required to make the intelligible.
  1. Exemptions

The right of access is subject to a number of safeguards and exceptions, which are designed to ensure the following.

* The identity of the applicant has been verified and the applicant falls within the criteria set out in the form.
* Access is not given to any part of the record likely to cause serious harm to the physical or mental health of the patient or any other individual.
* Information is not released to a patient’s personal representatives if it is evident that the patient did not wish access to be given.
* Access is not given to information, which relates to or was provided by an individual (other than patient) who could be identified from that information except if the third party health professional or other individual gave consent to the application.
* In the case of a deceased patient’s representative, access shall not be given to any part of the record which is not relevant to any claim which may arise out of the patient’s death.
* In the case of deceased patient’s representative, access shall not be given to any part of the record which the patient had previously requested not to be disclosed or information provided by the patient in the expectation that it would not be disclosed to the applicant; or information obtained as a result of any examination or investigation to which the patient consented in the expectation that the information would not be so disclosed.
* A child, who, in the view of the appropriate health professional is capable of understanding what the application is about, can prevent a person with parental responsibility from having access to their records. Also where in the view of the health professionals a child patient is not capable of understanding the nature of the application, the holder of the record is entitled to deny access if it were not felt to be in the patient’s best interest.
* Records containing pre-adoption information, must be split into pre and post adoption information. Requests for post adoption information follow normal procedure. Requests for pre-adoption information \* see section 9 and the protocol for subject access to pre-adoption information.

3.2 Compliance

The right of access must be provided within a given period of time, which depends upon the age of the records. For information less than forty days old, access must be provided within twenty-one days. In all other cases access must be given within forty days.

When a person who has been given access under the Act considers any information contained in the health record is inaccurate (i.e. incorrect, misleading or complete) he/she may apply to the health record holder for the necessary correction to be made. If the record holder is satisfied that the information is inaccurate, the necessary correction must be made in the relevant part of the record of the matters considered by the applicant to be incorrect. In both cases the record holder must supply the applicant with a copy of the correction or the note.

When disclosing information provided by a third party and in determining what is reasonable in all circumstances to comply with the request, it is necessary to have regard to:

* any duty of confidentiality owed to that third party;
* any steps taken with a view to seeking consent of the third party to the disclosure;
* whether the third party is capable of giving consent;
* any express refusal of consent by the third party.

Access can be refused where the surgery has previously complied with an identical or similar request from the same individual, unless a reasonable interval has elapsed between compliance with one and receipt of the other. In deciding what amounts to a reasonable interval the following factors should be considered: the nature of the information, the purpose for which the information is processed and the frequency with which the information is altered. Also the surgery is not required to respond unless it is provided with sufficient details to enable it to locate the information and satisfy itself as to the identity of the individual making the request.

4 Request by, or on behalf of, a child or a young person under 18

A child over 16, but under 18, or a child under 16 who is considered to be ‘Gillick’ competent and who, in either case, has sufficient mental capacity to understand the nature of the particular treatment and give consent to it, is presumed to also have right of access to his/her health records under the DPA. The person with parental responsibility also has a right of access to the records. (See below)

If a child or young person under 18 does not have sufficient understanding to make his or her request, a person with parental responsibility (referred to below as a parent), can make the request on the child’s behalf. Where a parent applies on behalf of a child, the doctors should be satisfied that the child lacks capacity to make a valid application or has capacity and has authorised the parent to make the application.

5 Requests made by or on behalf of an adult lacking mental capacity

Mental disorder does not equate with mental incapacity and many persons suffering from the former may have sufficient capacity to deal with their affairs. Requests for access by a person with a mental disorder will require a judgement in respect of their capacity. If they are to have capacity to manage their affairs and have sufficient understanding of their condition and its treatment, they are entitled to have access under the Data Protection Act to their health records.

If a person lacks capacity to manage their affairs, only a person acting under an order of the Court of Protection or acting within the terms of registered Enduring Power of Attorney which specifies they have access to health information for the patient can request access on his or her behalf. Please note the Mental Capacity Act 2005 will change this legislation in 2007 from Enduring Power of Attorney to Lasting Power of Attorney.

6a Requests made through another person

If a person has capacity and if she or he has appointed an agent, that person can make a valid request for access on behalf of the data subject. Agents should provide evidence of their authority and confirm their identity and relationship to the individual. Such evidence should normally be provided in writing. If the Doctors are satisfied that the subject has authorised the agent to make the request, it must treat the request as if the data subject has made it and proceed accordingly. This also applies where a person is acting on another’s behalf, under a general power of attorney.

A person who is profoundly physically disabled may not be able to give written consent for an agent to seek access on their behalf. Where the person is unable to give written consent the practice should give the individual as much assistance as possible. Ultimately, the Doctors will have to make a judgement on whether the individual has given consent for an agent to act on their behalf.

6b Requests from Police

Staff must follow the Disclosure to Police Policy/ Guidance

7 Requests for access to the records of a deceased person

The Data Protection Act applies only to data about living persons. The governing legislation for deceased records was contained in the Access to Health Records Act 1990 (C23) this Act is now incorporated in the Data Protection Act. As deceased records are no longer covered by this Act some requests have been received under FOI. In the absence of guidance from the Information Commissioner each request will be treated on a case by case basis using the principles of the 1990 Act.

8 Information that includes details about another person

If third party information is mentioned, and disclosure would allow them to be identified, the PCT may decide to obtain third party’s consent before disclosure. Alternatively it may decide that it is reasonable in all circumstances to disclose without third party consent. Where information that could identify a third party source, and disclosure could result in serious harm to the individual this would result in the information being exempt.

The 40 day period does not commence until the surgery has received a written request from the third party, the appropriate fee, and if necessary, the further information required to satisfy itself as to the identity of the person making the request, and to locate the information sought.

If consent is not given by a third party within 40 days, the surgery should give as much information as possible without identifying the third party. The practice should explain why some of the information requested has not been given. Where consent is or cannot be given and the doctors considers it reasonable to comply with the request without consent then the doctors/practice may be required to justify its actions.

If full access is not given or the data subject believes that the authority has failed to comply with the request he/she can apply to the Data Protection Commissioner or court.

9 Records containing Pre Adoption information

Access to pre adoption information is subject to The Adoption Regulations 2005. Requests for subject access to the pre adoption part of the records must be forwarded to the Information Governance Department along with the relevant pre adoption records. The practice has agreed to follow SSD procedures to meet counselling support required by this legislation and may refuse access without this support.

10 Where the practice decides to refuse access

Any notification or refusal to disclose personal data will be given as soon as practicable and in writing, even if the decision has also been given in person. The practice should record the reason for its decision and explain these to the data subject.

If the practice decided not to disclose some or all of the personal information, the applicant must be told the reasons, distinguishing between reliance on an exemption, inability to obtain consent of a third party or their refusal to consent.

11 Patient records process

A request for access has to be made in writing and be accompanied by the appropriate fee when this is required by the surgery. The practice provides a standard request form, see appendix A, but has no right to insist on its use. Where a person may be unable to make a written application without support, or because English is not the first language, the practice should make sure that suitable help is available.

If access is required for information written more than forty days before an application is made, a fee of £10.00 is payable. Charges will also be made for any photocopies of notes requested. The current maximum charged is £50 and future charges will take account of Government guidance.

If the practice does not hold the personal information requested, it should inform the applicant as quickly as possible.

Once the necessary information for an access request and fee is received , the request should be logged on the access to records database held by The Information Governance Department or The Risk Management Department.

12 Third Party Access

All requests from solicitors are processed within forty days and written consent from the patient must accompany the request. Clarification will be sought about whether litigation is intended against the practice. Requests from outside agencies e.g. DHSS, etc are processed and the forms returned to the agency. Police requests are dealt with in the Disclosure to Police Policy.

# 13 Information to be disclosed

The information to be disclosed is all the data held by the data controller (i.e. the practice), unless it is subject to any exemptions or a third party has refused to consent to disclosure. The information should not be altered in order to make it acceptable to the data subject.

The information disclosed must be that held at the time the request is received.

An individual who makes a request for access to personal information held by the practice is entitled to:

* be informed by the practice whether it or someone else acting on its behalf is processing that individual’s personal information;
* to be told,
  + all the information which forms any such personal information;
  + any information available to the practice as to the source of the information, although the practice is not obliged to disclose all such information where the source of the information is, or can be identified as an individual, but it is still obliged to disclose so much of the information as can be communicated without disclosing the identity of such individuals, whether by omission of names or other identifying particulars or otherwise.
  + Where the processing is by automatic means of personal data concerning the individual for the purpose of evaluating matters relating to him, such as his performance at work, his reliability or his conduct, he is entitled to be told of the reasoning involved in that process.

**Procedure for subject access to Pre Adoption Information**

* Requests to be forwarded to the Practice Manger for the attention of the Records Manager.
* Completed application request form must accompany the pre adoption records.
* Request will be forwarded to the Information Governance Group for applicability test and a referral to Head of Social Services Adoption Team will be made.
* A letter to the patient, will be sent within 5 working days, acknowledging the request and informing them that an appointment will be made by the SSD Adoption team to discuss sharing the information.

**ACCESS TO HEALTH RECORDS**

**COVERED BY THE DATA PROTECTION ACT 1998**

**Application for access on behalf of a minor/other relative – (APPENDIX A)**

**Community Service/ Allied Health Service:**…………………………………………………………………………………

**Patient:** Surname ………………………………………………………………

Forename(s) ………………………………………………………….

Address ...……………………………………………………………..

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Date of Birth .…………………………………………………………

NHS No (if known) …………………………………………………

To assist with administrative work would you please state which part of the health records you require copies of and the approximate dates.

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Would you please write below the reasons for requesting the above information.

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**Name** Surname ………………………………………………………………..

**Of**

**Applicant** Forename(s) …………………………………………………………..

Address ………………………………………………………………..

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………………………………………………………………

Signature …………………………………………. Date …………….

Relationship to patient …………………………………………………

**\***I have been asked to act by the patient and attach the patient’s written authorisation

**\***I am the patient’s parent/guardian and the patient is under 16 years of age

please delete as appropriate

**Declaration: I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record referred to under the terms of the Data Protection Act 1998.**

Please ask a witness to complete the section below:

**Witness:** I certify that I am (Name) ………………………………………………….

of (Address) ………………………………………………….

………………………………………………….

………………………………………………….

…………………………………………………..

And that I have known the applicant for …………….. years as an employee/ client/ patient/ personal friend and have witnessed the applicant sign the form.

Signed ……………………………………………………Date ……………………..

**Warning: You are advised that the making of false or misleading statements in order**

**to obtain access to information to which you are not entitled is a criminal offence.**

**ACCESS TO HEALTH RECORDS**

**Application for access to a deceased patient’s records – (APPENDIX B)**

**Community/Allied Health Service :**

………………………………………………………………………………….

**Patient:** Surname ……………………………………………………………...

Forename(s) ………………………………………………………….

Address ………………………………………………………………..

………………………………………………………………..

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Date of Birth ……………………………………………………………

Date of Death …………………………………………………………

To assist with administrative work would you please state which part of the health records you require copies of and the approximate dates.

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Would you please write below the reasons for requesting the above information.

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…………………………………………………………………………………………

**Name** Surname ………………………………………………………………..

**Of**

**Applicant** Forename(s) …………………………………………………………..

Address ………………………………………………………………..

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Please state relationship to the deceased and where copies should be sent:

Relationship …………………………………………………………………………..

Address ……………………………………………………………………………

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**Declaration: I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record**

Signed ………………………………………………Date………………………………

Please ask a witness to complete the section below:

**Witness:** I certify that I am (Name) ………………………………………………….

of (Address) ………………………………………………….

………………………………………………….

………………………………………………….

And that I have known the applicant for …………….. years as an employee/ client/ patient/ personal friend and have witnessed the applicant sign the form.

Signed ………………………………………Date ………………………………………..

**Warning: You are advised that the making of false or misleading statements in order to obtain access to information to which you are not entitled is a criminal offence.**

**ACCESS TO HEALTH RECORDS**

**COVERED BY THE DATA PROTECTION ACT 1998**

**Application for access on behalf of a minor/other relative – (APPENDIX C)**

**Community/Allied Health Service :……………..**………………………………………

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**Patient:** Surname …………………………………………………………………

Forename(s) …………………………………………………………….

Address ………………………………………………………………….

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Date of Birth ……………………………………………………………

Hospital No (if known) ………………………………………………

To assist with administrative work would you please state which part of the health records you require copies of and the approximate dates.

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Would you please write below the reasons for requesting the above information.

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**Name** Surname ………………………………………………………………..

**Of**

**Applicant** Forename(s) …………………………………………………………..

Address ………………………………………………………………..

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………………………………………………………………

Signature …………………………………………. Date …………….

Relationship to patient …………………………………………………

**\***I have been asked to act by the patient and attach the patient’s written authorisation

**\***I am the patient’s parent/guardian and the patient is under 16 years of age

please delete at appropriate

**Declaration: I declare that the information given by me is correct to the best of my knowledge and that I am entitled to apply for access to the health record referred to under the terms of the Data Protection Act 1998.**

Please ask a witness to complete the section below:

**Witness:** I certify that I am (Name) ………………………………………………….

of (Address) ………………………………………………….

………………………………………………….

………………………………………………….

…………………………………………………..

And that I have known the applicant for …………….. years as an employee/ client/ patient/ personal friend and have witnessed the applicant sign the form.

Signed ……………………………………………………Date ……………………..

**Warning: You are advised that the making of false or misleading statements in order**

**to obtain access to information to which you are not entitled is a criminal offence.**

**ACCESS TO HEALTH RECORDS**

**COVERED BY THE DATA PROTECTION ACT 1998**

Please indicate if records include pre adoption information. Yes / No

**Application for access to applicants own records**

**Community/Allied Health Service:**………………………………………………….…

**Patient:** Surname …………………………………………………………………

Forename(s) ………………….………………………………………….

Address ………………………….………………………………………..

………………………………………………………………..

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Date of Birth ……………………………………………………………

To assist with administrative work would you please state which part of the health records you require copies of and the approximate dates.

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Would you please write below the reasons for requesting the above information.

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**Declaration: I declare that I am the patient and that the information given by me is correct to the best of my knowledge. I believe I am entitled to apply for access to the health record referred to under the terms of the Data Protection Act 1998.**

Signed …………………………..……………………….. Date………………………

Please ask a witness to complete the section below:

**Witness:** I certify that I am (Name) ………………………………………………….

of (Address) ………………………………………………….

………………………………………………….

………………………………………………….

…………………………………………………..

And that I have known the applicant for …………….. years as an employee/ client/ patient/ personal friend and have witnessed the applicant sign the form.

Signed ……………………………………………………Date ……………………..

**Warning: You are advised that the making of false or misleading statements in order to obtain access to information to which you are not entitled is a criminal offence.**

**FOR SURGERY USE ONLY:**

Fee received …………….Signed …………………………………Date…………………

Name & Department ………………………………………………………………………

Access provided on ……………………….……………………………………………….