Subject Access Request Policy

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| **Author:** | FMC |
| **Name/Title of responsible individual:** | Management |
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**Subject Access Requests**

**What is subject access?**

Individuals have the right to request and receive a copy of the information that is held about them. This is known as a subject access request. This right of subject access means that patients can make a request under the Data Protection Act and GDPR to any organisation processing their personal data. The Act calls these organisations ‘data controllers’. Individuals can ask the organisation that is holding, using or sharing the personal information, to supply them with copies of both paper and computer records and related information held about them. This is a ‘subject access request’ (SAR).

**What happens when the Practice receives a request:**

SARs can be written, either letter or email and also be made verbally. Whether a request is written or verbal the Practice will need to check that the requestor is the person they say they are, appropriate security questions will be asked to ensure this.

The Practice will provide the individual a response within **1 calendar month (or 28 days).** The Practice can ask the individual for more specific information about what they would like, this is to narrow down what data is required to satisfy their request. The Practice will clearly document this within the patient record; as if the patient asks for subsequent information about the same subject then this could become chargeable.

All patient requests are to be authorised by a GP – if it is likely to cause the patient serious harm when providing the information, the request may be declined.

**Giving the patient the information they have asked for:**

A SAR applies to all the information the Practice holds about the patient, electronic and paper – this includes Lloyd George envelopes. If the Practice receives a SAR verbally then we will ask the patient what information they require, if any date ranges apply and how they would like to access the information. A task will be sent to the secretaries advising them of the request. If the Practice receives a letter or email request this this request will be scanned onto the patient record and assigned to the secretaries.

**Secretarial team duties:**

If the patient has access to online services then the secretarial team will send a task to the Data Co-ordinator who will enable full clinical record access for the patient once the record has been reviewed by a GP. The Practice will then write back to the patient and advise them they can review their information online.

If the patient requires a written response, then our usual processes apply to ensure the Practice is not sharing 3rd party information inappropriately, once this has been reviewed we will then provide the relevant print outs.

**Responding to SARs – the options**

1. The Practice can agree. If the Practice agrees to a SAR, the Practice must respond within **one month** and include all the data held on the data subject plus whichever of the information requested that applies. Providing all the data the Practice holds is regarded as the norm.

2. The Practice can decline. The Practice can decline to provide a SAR, or as the GDPR states, ‘not take action’. However the Practice will have to justify why within the universal **one-month** deadline and explain how the data subject can complain against the Practice decision. One obvious reason for declining is if the data has not changed since a previous request.

3. The Practice can request more time. The Practice can inform a patient that extra time is required, where it has been decided that it will take longer than a month to collate and supply the data. In this case the Practice must tell them this within the usual **one-month** deadline and the Practice will then have up to an additional two months to provide the information.

4. The Practice can negotiate. A SAR was defined under the Data Protection Act as the entire contents of the patient record and under GDPR that is the same basic default assumption, but it has now been recognised that over Several years on the Practice hold masses of data on registered patients, so a new option has been introduced: the Practice can supply less than the entire record by mutual agreement.

This means the Practice can agree with the patient (within the **one-month** period) to narrow down the data required to satisfy their request, provided they agree voluntarily and freely. The Practice must not coerce people into asking for less than they want or need. In these circumstances clearly document what is agreed within a first SAR – e.g., only the records of a hip operation. Subsequent SARs could then be chargeable, although the Practice should take a reasonable approach. If the patient asks for one additional letter it would be unreasonable to charge a fee, but if they ask for hundreds more pages, then a charge would be reasonable.

**When could the Practice negotiate?**

The Practice may feel a negotiated SAR is going to be more difficult and time consuming than just handing over the lot, but remember GDPR applies to all data formats – including the paper in Lloyd George envelopes. So, a sensible negotiated SAR might be everything stored regarding the patient in electronic form.

In most circumstances the patient is unlikely to want copies of the irrelevant historical paper records. Another option is to take everything from a certain date. It is the Practice’s responsibility to protect any other data subjects mentioned in the requestors records, so the practice must redact any information on non-medical third parties.

**What if the request is about a child?**

Even if a child is too young to understand about a SAR their personal data does not belong to anyone else.

Before responding the Practice will consider whether the child is mature enough to understand their rights. If the Practice is confident that the child can understand then the Practice must respond to the child rather than a parent or guardian. The Practice should consider:-

* The child’s level of maturity and ability to make decisions
* Nature of the personal data
* Any court orders
* Duty of confidence owed to the child
* The consequences of providing a parent or guardian with this information
* The detriment if an SAR is not provided
* Views of the child for disclosing information to a parent or guardian

*\* A person with parental responsibility will usually be entitled to access the records of a child who is aged 11 or younger.*

*Children aged 12 or older are usually considered to have the capacity to give or refuse consent to parents requesting access to their health records, unless there is a reason to suggest otherwise.*

*Although British Medical Association guidance says that every reasonable effort must be made to encourage the child to involve parents or guardians.*

**Can a SAR be made on behalf of others?**

If the Practice is satisfied that the third party making a request is entitled to act on behalf of the individual then yes. Evidence for proof of entitlement might be a written authority to make the request or it could be a more general power of attorney.

A 3rd party including legal representatives can ask for a patient record on behalf of the patient and the Practice cannot charge for this, however the Practice must ensure that appropriate consent is in place before releasing the information.

**PLEASE NOTE**:

* Solicitors are not permitted to seek a SAR to support an application that should be made under the Access to Medical Reports Act (AMRA), i.e., reports for employment and insurance purposes. This covers accident claims and insured negligence as well as mortgages and life insurance – anything covered by an insurance contract that requires a medical report. If a solicitor’s letter does not make the precise purpose of the request and report clear, then ask them if the report is being requested under GDPR or AMRA. If the report is to support an actual or potential insured claim then AMRA applies. The Practice can charge and no additional information is needed.
* The same applies to employers – so if the report is in connection with proposed or actual employment, it’s not classed as a SAR, meaning the Practice can charge and no additional information is needed.

**What if insurers get patients to make SARs?**

In the DPA 2018 it is a criminal offence, in certain circumstances and in relation to certain information, to require an individual to make a subject access request. The ICO will provide further guidance on this offence in due course.

**How much is the fee?**

The Practice is no longer allowed to charge for a SAR under the GDPR. The Practice charges for Non NHS services document has been updated and is available on our webpages.

For a repeat request the Practice can only charge a fee to cover administrative costs. So, the fee might involve the cost of professional time to redact records, for example. If the Practice invokes the unfounded or excessive clause the Practice will justify any reasons to the patient.

**What information is an individual entitled to?**

Subject access is most often used by individuals who want to see a copy of the information an organisation holds about them. However, subject access goes further than this and an individual is entitled to be:

* Told whether any personal data is being processed (including where there is no information held)
* Given a description of the personal data, the reasons it is being processed and whether it will be given to any other organisations or people
* Given a copy of the personal data
* Given details of the source of the data (where available)

**What happens if the requestor dies before a response is provided?**

If the requestor dies after a SAR is received then the response must be provided to the individual’s personal representative. As a matter of good customer service the Practice must check with the personal representative(s) that they still want to receive the information before anything is sent to them.

**What if the information has someone else’s information within it?**

The Practice does not have to comply with a SAR if doing so would disclose information about another individual who is identifiable unless:-

* The individual has consented to the disclosure
* It would be reasonable in all circumstances to comply with a request without consent

Remember:-

**Step 1** – Does the request require the disclosure of information that identifies a third party?

**Step 2** – Has the third-party individual consented?

**Step 3** – Would it be reasonable in all the circumstances to disclose without consent?

**Third Party Information**

Third party information that is present within the clinical record does not disengage the right of access. Within section 5(5) of the Data Protection Act (DPA) requires that as much personal data of the requester as possible must be provided without disclosing third party information. The requester may contact the third party organisation to obtain relevant documents.

**Is any information exempt from subject access?**

Some types of personal data are exempt from the right of subject access and so cannot be obtained by making a SAR. Information may be exempt because of its nature or because of the effect its disclosure is likely to have.

Beyond the ‘excessive or unfounded’ clause the Practice can also refuse to provide data where the patient already has the information. Other relevant exceptions include where:

* It would involve a disproportionate effort (eg, letters from the 1960s that are no longer relevant)
* It would disclose comments about a third party to the patient (except for others involved in their care)
* It could result in harm to the patient or anyone else
* The information is subject to a court order or is privileged, or subject to fertilisation or adoption legislation.

**Exemptions and restrictions – general**

The Data Protection Act 2018 (DPA) and the General Data Protection Regulations (GDPR), recognises that in some circumstances the Practice might have a legitimate reason for not complying with a subject access request (SAR), so it provides a number of exemptions from the duty to do so. Where an exemption applies to the facts of a particular request, the Practice may refuse to provide all or some of the information requested, depending on the circumstances. It is a matter for the Practice to decide whether or not to use an exemption – the DPA/GDPR does not oblige the Practice to do so, so the Practice is free to comply with a SAR even if the Practice could use an exemption.

If challenged, the Practice will be prepared to defend to the Information Commissioner’s Office or a court the Practice decision to apply an exemption. It is therefore good practice to ensure that such a decision is taken at a suitably senior level in within the organisation and that the Practice document the reasons for it.

**Exemptions**

**Confidential references**

From time to time the Practice may give or receive references about an individual, e.g. in connection with their employment, or for educational purposes. Such references are often given ‘in confidence’, but that fact alone does not mean the personal data included in the reference is exempt from subject access.

The DPA/GDPR distinguishes between references the Practice provides and references the Practice receives.

References the Practice provide are exempt from subject access if the Practice provide them in confidence and for the purposes of an individual’s education, training or employment or the provision of a service by them.

There is no such exemption for references the Practice receives from a third party. If the Practice receives a SAR relating to such a reference, the Practice must apply the usual principles about subject access to decide whether to provide some or all of the information contained in the reference.

Relevant considerations are likely to include:

* any clearly stated assurance of confidentiality given to the referee;
* any reasons the referee gives for withholding consent;
* the likely impact of the reference on the requester;
* the requester’s interest in being able to satisfy himself or herself that the reference is truthful and accurate; and
* any risk that disclosure may pose to the referee.

**Publicly available information**

If an enactment requires an organisation to make information available to the public, any personal data included in it is exempt from the right of subject access.

The exemption only applies to the information that the organisation is required to publish. If it holds additional personal data about an individual, the additional data is not exempt from the exemption to justify denying subject access to whole categories of personal data if for some individuals the crime and taxation purposes are unlikely to be prejudiced.

Personal data that:

* is processed for the purpose of discharging statutory functions; and
* consists of information obtained for this purpose from someone who held it for any of the crime and taxation purposes described above is also exempt from the right of subject access to the extent that providing subject access to the personal data would be likely to prejudice any of the crime and taxation purposes. This prevents the right applying to personal data that is passed to statutory review bodies by law-enforcement agencies, and ensures that the exemption is not lost when the information is disclosed during a review.

**Management information**

A further exemption applies to personal data that is processed for management forecasting or management planning. Such data is exempt from the right of subject access to the extent that complying with a SAR would be likely to prejudice the business or other activity of the organisation.

**Negotiations with the requester**

Personal data that consists of a record of your intentions in negotiations with an individual is exempt from the right of subject access to the extent that complying with a SAR would be likely to prejudice the negotiations.

**Social work records**

Special rules apply where providing subject access to information about social services and related activities would be likely to prejudice the carrying out of social work by causing serious harm to the physical or mental health or condition of the requester or any other person. These rules are set out in the Data Protection (Subject Access Modification) (Social Work) Order 2000 (SI 2000/415). Their effect is to exempt personal data processed for these purposes from subject access to the extent that its disclosure would be likely to cause such harm.

A further exemption from subject access to social work records applies when a SAR is made by a third party who has a right to make the request on behalf of the individual, such as the parent of a child or someone appointed to manage the affairs of an individual who lacks capacity. In these circumstances, personal data is exempt from subject access if the individual has made clear they do not want it disclosed to that third party.

**Other exemptions**

The DPA/GDPR contains additional exemptions that may be relevant when dealing with a SAR. For more information about exemptions, see the ICO Guide to Data Protection.

An organisation that makes appropriate use of the exemptions in the DPA/GDPR might have the following indicators of good practice:

* **Withholding or redacting information**

If information is withheld in reliance on an exemption, the response explains, to the extent it can do so, the fact that information has been withheld and the reasons why. The explanation is given in plain English, and does more than simply specify that a particular exemption applies.

Information to be redacted is approved before source material is copied in a redacted form. It is then subject to at least one quality review by a manager to confirm that all data has been excluded appropriately. A copy of the disclosure bundle showing the redactions and the reasons behind them is retained for reference.

Once approved, redaction is either carried out manually using black marker which is then photocopied, or electronically using Adobe Acrobat or bespoke redaction software.

* **Ensuring consistency**

Advice on applying the exemptions most likely to be relevant to the organisation’s activities is included in SAR guidance for staff. Quality assessments are carried out to ensure that exemptions are applied consistently.

**Extended Access To Primary Care**

**Data Protection Act 2018**

**Subject Access Request Application**

This form is to be used if you wish to find out what information, if any, Freuchen Medical Centre(FMC) is holding or is processing that relates to you.

**By completing this form we will be able to respond to your request for information as promptly as possible. Individuals requesting this information should note that FMC works in partnership with other organisations to deliver this service and as such FMC may refer you to another organisation if the information you request is not held by FMC.**

Please return your completed application form to:

e-mail: nhsnwl.freuchenmedicalcentre@nhs.net

*or in writing to*

 **Practice Manager**

**Freuchen Medical Centre**

**190 High Street**

**Harlesden**

**London**

**NW10 4ST**

Applying for your own records

Please complete the following sections:

1, 3 A and B, 4, 5, 6 and 7

Please note: section 1 b should only be completed if you currently or have previously worked for Freuchen Medical Centre, and you are requesting copies of your personnel records.

Making an application on behalf of the data subject

Please complete ALL sections.

Please note: section 1 b should only be completed if the person you are making an application on behalf of currently or previously worked for Freuchen Medical Centre (see section 1b for further details), and you are requesting copies of their personnel records.

Please ensure you enclose copies of all relevant authorisation documents

Making an application on behalf of a child

Only an individual with parental responsibility, or a third party (eg solicitor) acting on their behalf can make a request on behalf of a child. If you have parental responsibility for a child in order to help us establish your relationship to the child, you must submit one or more of the following:

* Full birth certificate of the child
* Full marriage certificate of parents (if details not shown on birth certificate)
* Full certificate of adoption
* Parental responsibility order
* Residence order
* Court order assigning parental responsibility

 **Section 1: Details of the person the request is about (data subject)**

In order to protect the privacy of the individual whom this request is about and in line with the requirements of the Data Protection Act, Freuchen Medical Centre is keen to ensure we locate the records and information only relating to the subject of this request. I would be grateful if you could supply the information outlined below.

Title:

Surname:

First Name:

Former Surname:

Date of Birth:

Gender (Male/Female):

NHS Number (if known)

Telephone Number (day):

Email Address:

Home Address:

Postcode:

If the above has been known by a different name or has lived at a different address during the period to which the information required relates, please give details below:

Name: From (date): To (date):

Address:

Postcode

Name: From (date): To (date):

Address:

Postcode

Section 1 b

Please complete the following ONLY if you are requesting copies of personnel records, and you (or the subject) is currently or has previously worked for Freuchen Medical Centre.

Dates of employment \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Section 2: Written Authority**

If you are acting on behalf of the Data Subject (i.e. the person to whom the information is about) written authority is required. Please complete the details below. Also, please state your relationship to the data subject (e.g. parent/guardian, solicitor, holder of power of attorney, etc.)

Your full name

Your address

Post code

Contact telephone number

Email address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Relationship to the subject:

**Section 3: Proof of Identity**

It will be necessary to confirm the identity of **all** parties included on this form. Please supply a photocopy of **one** document from section A and B, and **all** relevant documents from section C with the application.

A. Confirmation of name[[1]](#footnote-1)

* Full driving licence
* Passport
* Birth certificate
* Marriage certificate
* HSCIC identity badge

B. Confirmation of address

* Utility bill
* Bank statement
* Credit card statement
* Benefit book
* Pension book

C. Confirmation that a third party can access the records of the data subject

* Health and Welfare Lasting Power of Attorney
* Full birth certificate of child
* Full marriage certificate of parents (if details not shown on birth certificate)
* Full certificate of adoption
* Parental responsibility order
* Signed declaration from the Data Subject themselves
* Court of Protection Order appointing you as a personal deputy for the personal welfare of the data subject

I am providing the following types of identification, which are attached to this document.

A. Confirmation of name

B. Confirmation of address

C. Third Party confirmation

**Section 4: What information do you require?**

Please detail here the information you require from Freuchen Medical Centre.

**Section 5: Helping us to find the information**

Please use the space below to provide further details that may help to locate the information you are seeking. Please supply as much detail as possible such as:

* For personnel records – names of individuals who you believe may hold personal data relating to yourself/3rd party
* Any other details you may feel have relevance e.g. relevant dates etc.

**Section 6: Dispatch details**

Please indicate where you would like your records dispatched to (please select one option):

🗆 I am the data subject and would like my records to be dispatched to my home address as detailed in section 1 above

🗆 I am acting on behalf of the data subject and would like the records dispatched to the address as detailed in section 2 above

🗆 I would like my records to be dispatched to my GP

GP Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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Postcode \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Section 7: Declaration**

Unless there is Health and Welfare Lasting Power of Attorney or the application is being made on behalf of a child under the age of 12, all persons named on this form should sign below.

I confirm that the information that I have supplied in this application is correct, and I am the person to whom it relates or I am acting on behalf of the data subject and have enclosed the relevant authority as detailed in section 3.

Data subject

Signature: Date:

Print Name

Person making a request of behalf of the data subject

Signature: Date:

Print Name

Freuchen Medical Centre will provide any requested information electronically if an email address is supplied. Any documents will be password protected.

Please note that information posted by special delivery will require a signature upon receipt. However, if the Royal Mail are unable to deliver to the address given and need to return the documentation to the Health and Social Care Information Centre this will be returned by normal post (i.e. not under confidential cover).

**Your Checklist**

Is your contact information correct? [ ]

Have you enclosed acceptable identification? [ ]

Have you signed the form? [ ]

Have you completed all the relevant sections? [ ]

1. Where there has been a change of name we will require evidence of the name for which the information is being sought e.g. a birth certificate will not be considered as evidence for searches on a married name. [↑](#footnote-ref-1)