



DUNLOP
ORTHOPAEDICS

Subject Access Request Policy & Procedure

-Dunlop Orthopaedics Ltd

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Subject Access Request

Introduction

Patients have the right to ask for copies of the personal data we store and use. This forms article 28 of The Data Protection Law (Jersey) 2018 ('The Law')¹. This is their right of access, also known as making a subject access request or SAR. We'll normally respond at the latest within one calendar month of receiving the request. There may be times where we need longer or we may need to charge a reasonable fee for admin costs. We will let the applicant know this within 14 days of receiving the request.

Scope of this policy

What can and cannot be requested

Patients are entitled to ask and be:

- told whether any personal data is being processed;
- given a description of the personal data, the reasons it's being processed, and whether it will be given to any other organisations or people;
- given the information contained in personal data; and the details of the source of the data (where available).

They are not entitled to ask for information:

- relating to other people (unless they're acting on behalf of that person and with appropriate authority);
- simply because they may be interested in it;
- contained in the whole document that includes their data

What is health data?

A health record exists to provide an account of an individual's contact with our healthcare system. Health records consist of information relating to the individual's physical or mental health or condition, made by a health professional in connection with your care².

The information is most commonly recorded in electronic form; however, some records are in a manual form or a mixture of both. 'Information' covers expressions of opinion as well as facts. Health records may include notes made during consultations, correspondence between health professionals such as referral and discharge letters, results of tests and their interpretation, X-ray films, videotapes, audiotapes, photographs, and tissue samples taken for diagnostic purposes. They may also include reports written for third parties such as insurance companies.

Who may apply for access?

Patients with capacity: Patients with capacity have a right to access their own health records via a SAR. Patients may also authorise a third party such as a solicitor to do so on their behalf.

¹ <https://www.jerseylaw.je/laws/enacted/PDFs/L-03-2018.pdf>

² <https://www.bma.org.uk/media/2821/bma-access-to-health-records-june-20.pdf>

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Competent young people may also seek access to their own records. It is not necessary for patients to give reasons as to why they wish to access their records.

Children and young people under 18: Where a child is competent, they are entitled to make or consent to a SAR to access their record.

Children aged over 16 years are presumed to be competent. Children under 16 must demonstrate that they have sufficient understanding of what is proposed in order to be entitled to make or consent to an SAR. However, children who are aged 12 or over are generally expected to have the competence to give or withhold their consent to the release of information from their health records. When assessing a child's competence, it will be explained in a way that is suitable for their age.

Where, in the view of the appropriate health professional, a child lacks competency to understand the nature of his or her SAR application, the holder of the record is entitled to refuse to comply with the SAR.

Where a child is considered capable of making decisions about access to his or her medical record, the consent of the child must be sought before a parent or other third party can be given access via a SAR.

Next of kin: A next of kin cannot give or withhold their consent to the sharing of information on a patient's behalf; As next of kin they have no rights of access to medical records.

Solicitors: We will make sure, before releasing information to solicitors acting for their patients, the solicitor provides us with the patient's written consent. The consent must cover the nature and extent of the information to be disclosed under the SAR (for example, past medical history), and who might have access to it as part of the legal proceedings. Where there is any doubt, we will confirm with the patient before disclosing the information. Should the patient refuse, the solicitor will be advised to consider applying for a court order requiring disclosure of the information.

While the GDPR entitles the applicant (or their solicitor) to be supplied with a copy of the health record it does not entitle them to be supplied with the original record. We do not send original notes and records to solicitors (or any other external parties) because of the potential detriment to patient care should the records be lost.

How a request can be made

We will accept requests:

- in written form via letter, fax or email
- verbally if a person is unable to make a written request [due to disability] a reasonable adjustment can be made
- that do not contain reference in the request to the Law
- received by any member of the practice
- via our Subject Access Request Form (Appendix 1)

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Applicant identification

We will process requests once the identity of the applicant has been confirmed. When requests are received by email from a patient that we have an active and recent relationship with, this will be accepted as reliable identification verification. Patients who we have not had recent activity with or do not disclose enough details to confirm their identity will be asked for further identification verification. This could be by asking for a copy of their ID (driving licence or passport etc) or asking them to confirm information such as their date of birth, address etc.

How information could be shared

Depending on the original format/volume of information to be shared, this will be done either electronically or by post. The information will be in an 'intelligible form' as stipulated by the Law. It may not always be legible in presentation (poor handwriting) or legible to the recipient (language barrier). Legibility is not a stipulation of the law, we will however make reasonable adjustments to ensure the information can be understood by the recipient.

When data will not be shared

We reserve the right to withhold information from disclosure, if:

- it is likely to cause serious physical or mental harm to the patient or another person; or
- it relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient) and after taking into account the balance between the duty of confidentiality to the third party and the right of access of the applicant, the data controller concludes it is reasonable to withhold third party information; or
- it is requested by a third party and, the patient had asked that the information be kept confidential, or the records are subject to legal professional privilege or, in Scotland, the records are subject to confidentiality as between client and professional legal advisor. This may arise in the case of an independent medical report written for the purpose of litigation. In such cases, the information will be exempt if after considering the third party's right to access and the patient's right to confidentiality, the data controller reasonably concludes that confidentiality should prevail; or
- it is restricted by order of the courts; or
- it relates to the keeping or using of gametes or embryos or pertains to an individual being born as a result of in vitro fertilisation; or
- in the case of children's records, disclosure is prohibited by law, e.g. adoption records.

The decision to disclose or withhold information is the responsibility of the data controller. Whilst some information may be redacted in copies of files for sharing, no changes will be made to original health documents. The data controller must redact, or block out any exempt information. Depending on the circumstances, it may be that the data controller should take steps to explain to the applicant how it has applied the relevant exemption.

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However, such steps should not be taken if, and insofar as, they would in effect cut across the protections afforded by the exemptions. Indeed, in some cases even confirming the fact that a particular exemption has been applied may itself be unduly revelatory (e.g. because it reveals the fact that the information sought is held where this revelation is itself unduly invasive of relevant third party data privacy rights). There is still an obligation to disclose the remainder of the records.

While the responsibility for the decision, as to whether or not to disclose information, rests with the data controller, advice about serious harm must be taken by the data controller from the appropriate health professional. If the data controller is not the appropriate health professional, then the appropriate health professional needs to be consulted before the records are disclosed. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters which are the subject of the request. If there is more than one, it should be the person most suitable to advise. If there is none, advice should be sought from another health professional who has suitable qualifications and experience.

Circumstances in which information may be withheld on the grounds of serious harm are extremely rare, and this exemption does not justify withholding comments in the records because patients may find them upsetting. Where there is any doubt as to whether disclosure would cause serious harm, we would seek independent advice and opinion from suitably trained registered health professional, Data Protection Officer, Caldicott Guardian or defence body. This will be done in a way that maintains confidentiality and anonymity of the applicant.

Appendix 1

Subject Access Request form

You don't have to use this form to ask for copies of your data, but it's helpful for us to know what you're looking for so we can respond fully and promptly.

Please send your completed form or written request to us using the contact details at the bottom of the page.

1. Who's making this request?

We're asking for your contact details so we can send your response and discuss your request with you (if needed). You only need to give us relevant details. For example, you only need to give us your postal address if you'd like us to respond by post or if you think it would help us identify you. We may ask you for proof of ID if we feel it's reasonable and proportionate. The timescale for responding to your request will start when we receive this.

Your name

Contact number

Email address

Postal address

Are you making this request on behalf of someone else?

Yes

No (Please move to section three)

2. Please provide contact details of the person you are making the request for.

If you're making the request on behalf of someone else, we need to know who they are and their contact details in case we need to get in touch.

Name of other person

Contact number

Email address

Postal address

Other contact information for the person you are making the request for

You also need to give us proof of your authority to act on their behalf. For example, this could be written authorisation from them or a relevant power of attorney.

Please send proof of authority together with this form when you make your request.

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- Yes, I've got proof of my authority to act on someone else's behalf and I'll include it with my form. (Please move to section four.)
- No, I haven't got any proof of authority yet, but will send it at a later date. I understand you can't action my request until you receive this information.

3. How would you like us to respond to you?

We'll try and respond to you in the way that suits you. Please let us know if you need us to make any adjustments for you eg large font.

- Email** **Post** **Other (please specify)**

4. What personal data are you requesting?

If you know exactly what personal data you're looking for, it's helpful if you let us know. For example, if you need a specific email, we could search for this using a particular word or phrase.

Briefly describe your request

5. Is there a date range of the personal data you're asking for?

It's helpful if you're as specific as possible about your request. For example, if you've been a customer for several years, but you only need data about your recent purchase history, you could ask for data about things you've bought only in the last few months.

Date from

Date to

6. Can you tell us anything else to help us with our search?

If there's anything else of relevance you can tell us to help us identify you or the data you're requesting, please include this here. For example, any aliases, date of birth, order number or a customer reference number.

Further information to help us find the data you need

Please send your application via email to: kate@dunlopoorthopaedics.com or via post: Spectrum Consulting, 5a Spectrum, Gloucester Street, St Helier JE2 3DB