

# DATA PROTECTION OFFICE NEWS

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## Contact Details

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## DPO Newsletter 40

### **Access to patient records via NHS App – implementation date November 2022**

As you will be aware, the Accelerating Citizen Access to Records Programme, which is intended to enable patients to access their prospective health record data, including free text, documents and letters, is to be implemented from November 1st via the NHS app.

[Access to patient records through the NHS App - NHS Transformation Directorate \(england.nhs.uk\)](https://www.england.nhs.uk)

Ongoing concerns include:

- Practice teams not having sufficient time and resources to fully establish and embed the necessary safety processes to support this programme of work
- The risk of a patient, or their relatives, viewing sensitive safeguarding information, which could also then breakdown the relationship of trust between the patient and the GP
- The risk of patients seeing a provisional diagnosis of, for example, cancer before the relevant clinician has had the opportunity to talk to the patient.
- Patients not understanding the data held in the record, leading them to contact the practice, putting further demand on already overstretched GP practice teams
- The process restricts some groups who may benefit from record access, such as children with serious conditions requiring monitoring, or giving them the opportunity to feel in control of their health and learning with the support of their parents/ carers using online services in a responsible way

- NHS England/ NHS Digital have not supplied a detailed Data Protection Impact Assessment template to support practices
- The Redaction software not being fully functional

### Exemptions

As dictated in the GDPR and the DPA 2018, there are certain exemptions which would dictate you do not share data with a patient. These are:

- Health data processed by a court
- Child Abuse data
- Data Which could cause serious harm

### Serious harm test

The serious harm test can only be conducted by a health professional. GPs must consider whether disclosure of the data would be “likely to cause serious harm to the physical or mental health of the data subject or another individual.”

There are certain actions practices can take to mitigate some of these concerns:

The “104 code” has been made available to practices to delay selected patients accessing their prospective data: “*Enhanced review indicated before granting own access to health record*”: **1364731000000104** to selected records; this code would need to be applied to the patient record in advance of November 1st, 2022.

The follow up codes are:

- 1290301000000109 - Online access to own health record withheld following enhanced health record review (finding)
- 1290311000000106 - Online access to own health record granted following enhanced health record review (finding)
- 1290331000000103 - Online access to own health record declined by patient (situation)

EMIS/TPP and Docman systems have the functionality to hide certain documents from view and we have attached the instructions for how to do this. All staff members inputting data into the clinical record, must be aware of how to do this contemporaneously to make this programme of work safe.

We have also attached the GP readiness checklist, which you may find useful.

If you require any further information, please do not hesitate to contact Jane Hill, GP Practice Data Protection officer at [jane.hilldpo@nhs.net](mailto:jane.hilldpo@nhs.net)

### **Access to Deceased Records**

From August 1st, 2022, GP Practices are no longer required to send a copy of the electronic medical record of the deceased patient to PCSE and any Access to Health Records Act requests should be dealt with by the practice. Records should be held for 10 years after death and while the deceased are out of the scope of the Data Protection legislation, a Duty of Confidentiality should of course continue after a patient has died.

**The Access to Health Records Act (AHRA) 1990** provides certain individuals with a right of access to the health records of a deceased individual. These individuals are defined under Section 3(1)(f) of that Act as, '*the patient's personal representative and any person who may have a claim arising out of the patient's death*'.

A personal representative is the executor or administrator of the deceased person's estate. They must apply to access the record in writing and, if they are the Administrator, provide proof of Grant of probate. Access requests can take up to 40 days to process. Please be mindful that the following information can be withheld:

- 3rd Party information, except those who were involved in the deceased's healthcare
- Information that may cause serious physical or mental harm to someone else
- Information that the deceased wished or expected to remain confidential

NHS England have now produced a guidance document to support the changes in the management of the health records of the deceased. You can read the guidance here:

[Access to the health and care records of deceased people](#)

If you require any further information about the above, or any other Data Protection issues, please do not hesitate to contact me at [jane.hilldpo@nhs.net](mailto:jane.hilldpo@nhs.net) or [westpennine.lmc@nhs.net](mailto:westpennine.lmc@nhs.net) or mobile 07951 530 417.