



## **Subject Access Request Policy**

### **1. Policy Objective**

The purpose of this policy is to ensure that a procedure is in place to respond to any patient/service user access request for sight of their records held by Audiological Science Ltd. (“the Organisation”).

### **2. Relevant CQC Fundamental Standard/H&SC Act Regulation (2014)**

- Regulation 17: “Good Governance”.

### **3. Definition of a Clinical Record**

The Data Protection Act 1998 defines a clinical/medical record as a record consisting of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual.

A health record can be recorded in a computerised form or in a manual form or even a mixture of both. They may include such things as, hand-written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records e.g. X-rays, printouts from monitoring equipment, photographs, videos and tape-recordings of telephone conversations.

Subject to certain exemptions, patient/service users or their representatives have the right to access any of their personal records held by Audiological Science Ltd.

The main legislative measures that give rights of access to medical records include:

#### **a) The Data Protection Act 1998**

The Data Protection Act 1998 gives every living person, or their authorised representative, the right to apply for access to their medical records irrespective of when they were compiled. The exception to this is the records of deceased patient/service users, which are still governed by the Access to Health Records Act 1990.

The Data Protection Act 1998 is not confined to medical records held for the purposes of the National Health Service. It applies equally to the private health sector and to health professionals' private practice records. It also applies to the records, for example, of employers who hold information relating to the physical or mental health of their employees if the record has been made by or on behalf of a health professional in connection with the care of the employee.

The Information Commissioners Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals under the Data Protection Act 1998. They have a website with useful guidance about the Act: [www.ico.gov.uk](http://www.ico.gov.uk)

#### **b) The Access to Health Records Act 1990**

The Access to Health Records Act 1990 gives the personal representative of the deceased, or those who may have a claim arising out of the death of the individual, a right to access the medical record of the deceased.

#### **c) The Medical Reports Act 1988**

The Medical Reports Act gives individuals the right to have access to reports, relating to themselves, provided by medical practitioners for employment or insurance purposes.

#### **d) The Mental Capacity Act 2005**

The Mental Capacity Act 2005 gives a patient/service user's attorney (or court appointed deputy) who have been authorised to make personal welfare decisions the right to access records as the patient/service user's representative. The Code of Practice to the Act requires that attorneys and deputies should only ask for information relevant to any decision they are authorised to make on behalf of the patient/service user when they cannot make the decision for themselves.

The Mental Capacity Act 2005 requires anyone making a personal welfare decision to act in best interests which includes consulting others. This may require sharing information in the person's best interests. In certain specified circumstances, where there is no one to consult, the person making the decision must consult an Independent Mental Capacity Advocate who will have a right to access relevant health records in connection with their functions under the Act.

#### **e) Freedom of Information Act 2000**

- Living patient/service user:

Requests for access to medical records are exempt under section 40 of the Freedom of Information Act. All such requests should be made under the provisions of the Data Protection Act 1998.

- Deceased patient/service user:

Most of the information in the medical record is likely to be confidential and exempt under section 41 of the Freedom of Information Act. This exemption may not apply to any information already made public, for example on the death certificate. Requests for access to the records of a deceased patient/service user should be made under the provisions of the Access to Health Records Act 1990.

#### **f) The Data Protection Act 1998**

The Data Protection Act 1998 defines a medical record as a record consisting of information about the physical or mental health or condition of an identifiable individual made by or on behalf of a health professional in connection with the care of that individual.

A health record can be recorded in a computerised form or in a manual form or even a mixture of both. They may include such things as, hand-written clinical notes, letters to and from other health professionals, laboratory reports, radiographs and other imaging records e.g. X-rays, printouts from monitoring equipment, photographs, videos and tape-recordings of telephone conversations.

Subject to certain exemptions, patients/service users or their representatives have the right to access any of their personal records held by Audiological Science Ltd.

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Responsibility for dealing with an access to medical record request lies with the "data controller". A data controller is defined as a person who either alone or jointly determines the purposes for which and the manner in which any personal data about an individual are, or are to be, processed. A data subject would refer to a patient/service user.

Within Audiological Science Ltd. responsibility for the management of requests for access to medical records is held by the Operations Manager or nominee.

#### **4. Appropriate Health Professional To Consult**

The Data Protection (Subject Access Modification) (Health) Order 2000 sets out the appropriate health care professional to be consulted to assist with subject access requests as the following:

- the health professional who is currently, or was most recently, responsible for the clinical care of the patient/service user ; in connection with the information which is the subject of the request

or

- where there is more than one such health professional, the health professional who is the most suitable to advise on the information which is the subject of the request.

## **5. Retention Of Medical Records / Who May Make An Application?**

The Department of Health recommends minimum retention periods for health records. The organisation will follow these at all times.

### ***The Patient/service user***

Subject to the exemptions listed in section 6 any patient/service user can request access to any of their personal records held by the Organisation. The patient/service user does not have to state the reason for their request.

The request for access to medical records should be made in writing and with the patient/service user's signature. In cases where consent can only be taken verbally, then the details of this consent will be recorded on the individual's Medical Record. Electronic requests will only be accepted with an electronic signature. If this is not possible, the applicant will be advised to fill in a manual consent form.

Once a subject access request is received, consent must be verified. The organisation will require:

- A signature from the patient/service user to the release of their records
- 2 forms of identification e.g. Drivers Licence, Passport or Birth Certificate and proof of address e.g. utility bill.

### ***A Representative Of A Patient/service user Who Lacks Capacity***

The application may be made by:

- Persons with authority under a Personal Welfare Lasting Power of Attorney
- Court Appointed Deputy with specific personal welfare responsibilities
- an appointed Independent Mental Capacity Advocate

### **What can be requested?**

Information to enable the person to make a personal welfare decision when the patient/service user is unable to do so or information required to enable consultation in best interests. This will not necessarily include the whole of the record and should be limited to information necessary to meet their responsibilities under the Mental Capacity Act.

In order to ensure that patient/service user confidentiality is maintained the organisation will require:

- Evidence of authority to make personal welfare decisions or
- Evidence of IMCA appointment and
- Evidence of identity
- The reason why information is being requested and
- Exactly (if possible) what information is required

### ***Deceased Patient/service user's Records (Requested Under The Access To Health Records Act)***

The patient/service user's personal representative (the executor or administrator of the deceased's estate) is the only person who has an unqualified right of access to a deceased patient/service user's record and need give no reason for applying for access to a record.

Individuals other than the personal representative have a legal right of access under the Act only where they can establish a claim arising from the patient/service user's death. There is less clarity regarding which individuals may have a claim arising out of the patient/service user's death. Whilst this is accepted to encompass those with a financial claim, determining who these individuals are and whether there are any other types of claim is not straightforward. The decision as to whether a claim actually exists lies with the organisation as the record holder. In cases where it is not clear whether a claim arises the organisation will seek legal advice

In order to proceed with the request, the organisation will require:

- Documentary proof that an individual is the patient's/service user's personal representative or executor of the estate
- If the application is made on the basis of a claim arising from the deceased's death applicants must provide evidence to support their claim
- Identification as in section 4.1

### ***Parents***

If a parent or a person authorised with parental responsibility is applying for access to their child's clinical records, the health professional should consider if the child is of a capable age of making his or her own judgement on their healthcare. If they are, consent should be sought before the application is accepted.

Parental responsibility for a child is defined in the Children Act 1989 as "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property". Although not defined specifically, responsibilities therefore would include:-

- Safeguarding and promoting a child's health, development and welfare.
- Financially supporting the child.
- Maintaining direct and regular contact with the child.

Included in the parental rights which would fulfil the parental responsibilities above are:-

- Having the child live with the person with responsibility or having a say in where the child lives.
- If the child is not living with her/him, having a personal relationship and regular contact with the child.
- Controlling, guiding and directing the child's upbringing.

The law regards young people aged 16 or 17 to be adults for the purposes of consent to treatment and right to confidentiality. Therefore if a 16 year old wishes a health practitioner to keep the treatment confidential, then that wish should be respected.

Children under the age of 16 who have capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on and generally to have their confidence respected. However, good practice dictates that the child should be encouraged to involve parents or other legal guardians in any treatment.

In order to proceed with the request, the organisation will require:

- Proof of relationship to the child
- Identification as in section 4.1.

### ***Patient/service users Domiciled Outside The United Kingdom***

Former patients/service users living outside of the UK who have been treated by the Organisation have the same rights of access to their records as UK based patients/service users

### ***Solicitors/Insurance/Medical Company requests***

Solicitors/Insurance/medical companies acting on behalf of a patient/service user may make an application for access to the patient/service user's records

The organisation will require written consent from the patient/service user for the release of copies of the notes.

In some circumstances, the health professional may contact the patient/service user in order to clarify that they fully understand they will be consenting to the release of their health records to a third party.

### ***The Police***

Information from patient/service users' records can be given to the police in accordance with legal requirements. It will be advisable to involve the organisation's insurers (and any medical staff's professional indemnity organisation) should such a

request be received.

### ***Government Benefit Agencies***

Requests for information may be made by:

- Department of Work and Pensions
- Criminal Injuries Compensation Authority

The Organisation will require written consent from the patient/service user for the release of copies of the notes.

### ***Other Health Care Providers***

Other healthcare organisations (NHS and private) may request copies of a patient/service user's record in order to provide continuity of care for that patient/service user.

## **6. Processing the Application**

Where an access request has previously been complied with, the Act permits that the organisation does not have to respond to a subsequent identical or similar request unless a reasonable interval has elapsed since the previous compliance.

### **Timing**

Under the Data Protection Act 1998, there is no obligation to comply with an access request unless the health professional has such information as s/he needs to identify the applicant and locate the information and unless the required fee has been paid.

Once the health professional has all the relevant information, they should comply with the request promptly i.e. within 21 days and by no later than 40 days after the request has been made. In exceptional circumstances if it is not possible to comply within the 40-day period the applicant should be informed.

Under the Data Protection Act 1998 (Fees and Miscellaneous Provisions) Regulations 2001, patient/service users could be charged to view their medical records. However this is no longer permissible.

NOTE THAT FROM MAY 2018 THESE CHARGES MAY NO LONGER BE MADE UNDER THE TERMS OF THE GENERAL DATA PROTECTION REGULATIONS 2018