

Access to Medical Records Policy (Subject Access Requests)

JENNER HOUSE SURGERY

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1 Introduction

1.1 Policy statement

The purpose of this document is to ensure that appropriate procedures are in place at Jenner House Surgery, to enable individuals to apply for access to information held about them, and for authorised individuals, information held about other people. This policy is written in conjunction with the following government legislation:

1. The Access to Health Records Act 1990
2. The Access to Medical Reports Act 1988
3. The General Data Protection Regulation
4. The Data Protection Act 2018
5. The Freedom of Information Act 2000
6. The Data Protection (Subject Access Modification) (Health) Order 2000

1.2 Status

This document and any procedures contained within it are contractual and therefore form part of staff members contract of employment. Employees will be consulted on any modifications or change to the document's status.

1.3 Training and support

The practice will provide guidance and support to help those to whom it applies understand their rights and responsibilities under this policy. Additional support will be provided to managers and supervisors to enable them to deal more effectively with matters arising from this policy.

2 Scope

2.1 Who it applies to

The content of this document applies to all employees of the practice and other individuals performing functions in relation to the practice, such as agency workers, locums and contractors.

2.2 Why and how it applies to them

In accordance with the [General Data Protection Regulation](#) individuals have the right to access their data and any supplementary information held by Jenner House Surgery; this is commonly known as a data subject access request (DSAR). Data subjects have a right to receive:

- Confirmation that their data is being processed
- Access to their personal data
- Access to any other supplementary information held about them

This policy will outline the procedure to access health records at Jenner House Surgery as follows:

- For an individual, for information about themselves
- For access to the health records of a deceased individual
- Access to health records of an individual by an authorised person (by a court), when the individual does not have the capacity to make such a decision
- Organisations requesting information about an individual for employment or insurance purposes (governed by [The Access to Medical Reports Act 1988](#))

The practice aims to design and implement policies and procedures that meet the diverse needs of our service and workforce, ensuring that none are placed at a disadvantage over others, in accordance with the Equality Act 2010. Consideration has been given to the impact this policy might have in regard to the individual protected characteristics of those to whom it applies.

3 Policy

3.1 Right to access

In accordance with the [Access to Health Records Act 1990](#) individuals have the right to access health records held by a healthcare provider that has treated that individual, and/or to access a summary care record (SCR) created by the individual's GP. The [Data Protection Act \(DPA 2018\)](#) gives individuals the right to ask for a copy of the information an organisation holds about them; this right is commonly known as a Data Subject Access Request (DSAR). In the case of health records, a request for information has to be made with the organisation that holds the individual's health records, otherwise known as the data controller.

Jenner House Surgery has mechanisms in place to inform patients of their right to access the information held about them, and how long it will take for a DSAR process to be completed.

With effect from April 2016, NHS practices are, as part of their contractual obligation, to provide patients with access to coded information held within their health records. Such information includes:

- Demographics
- Allergies
- Immunisations
- Medication
- Results
- Procedures
- Values
- Problems/diagnoses
- Other (ethnicity, QOF, etc.)

NHS England have published an information leaflet [Patient Online](#) which provides further detailed information about this obligation and how patients can access their health record online.

There are occasions when a GP may firmly believe that it is not appropriate to share all the information contained in the individual's record, particularly if there is potential for such information to cause harm or distress to individuals, or when the record has information relating to a third party.

Patients may request paper copies of health records and, regardless of the preferred method of access, patients and authorised third parties must initially complete a DSAR form. However, patients may request access to their health records informally;¹ **any such requests should be annotated within the individual's health record by the clinician dealing with the patient.**

3.2 Requests

Requests may be received from the following:

Competent patients may apply for access to their own records or authorise third-party access to 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 in England, Wales and Northern Ireland 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. In Scotland, anyone aged 12 or over is legally presumed to have such competence. When assessing a child's competence, it is important to explain the issues 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 (see paragraph 4.1.3 below).

Next of kin despite the widespread use of the phrase 'next of kin', this is not defined, nor does it have formal legal status. 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. For parental rights of access, see the information above.

Parents may apply to access their child's health record so long as it is not in contradiction to the wishes of the competent child.²

¹ How do I access my medical records (health records)?

<http://www.nhs.uk/chq/pages/1309.aspx?categoryid=68>

² Parental responsibility

<https://www.bma.org.uk/advice/employment/ethics/children-and-young-people/parental-responsibility>

Individuals with a responsibility for adults who lack capacity are not automatically entitled to access the individual's health records. Jenner House Surgery will ensure that the patient's capacity is judged in relation to particular decisions being made. Any considerations to nominate an authorised individual to make proxy decisions for an individual who lacks capacity will comply with the Mental Capacity Act in England and Wales and the Adults with Incapacity Act Scotland.

Next of kin have no rights of access to health records.

Police are not able to access health records without first obtaining a court order or warrant. However, health professionals at Jenner House Surgery may disclose relevant information to the police if the patient has consented or if there is overriding public interest. For detailed information, see section 4.1.6 of footnote 2.

Solicitors and insurance companies in most cases will provide the patient's signed consent to release information held in their health record. A standard consent form has been issued by the BMA and Law Society of England and Wales and Jenner House Surgery will request that third parties complete this form. Jenner House Surgery will ensure that patients are fully aware of the information being provided to the solicitor who is acting for that patient. In the case of a solicitor requesting information, the BMA has provided the following templates:

- [Consent form to release information to solicitors in England & Wales](#)
- [Consent form to release information to solicitors in Scotland](#)

The Information Commissioner's Office (ICO) refers to the use of SARs to obtain medical information for insurance purposes as an abuse of access rights and the processing of full medical records by insurance companies risks breaching the GDPR.

Therefore, Jenner House Surgery will contact the patient to explain the extent of disclosure sought by the third party. The practice can then provide the patient with the medical record as opposed to the insurer. The patient is then given the opportunity to review their record and decide whether they are content to share the information with the insurance company or solicitor.

Jenner House Surgery will advise insurers to use the Access to Medical Reports Act 1988 when requesting a GP report.

Deceased patients retain the right of confidentiality. There are a number of considerations to be taken into account prior to disclosing the health record of a deceased patient. Such considerations are detailed in the Access to Health Records Act 1990. Under the terms of this Act, Jenner House Surgery will only grant access if you are either:

- A personal representative (executor of the deceased person's estate), or
- Someone who has a claim resulting from the death

The medical records of the deceased will be passed to Primary Care Support England (PCSE) for storage. Jenner House Surgery can advise you of who you need to contact in such instances. PCSE will retain the

GP records of deceased patients for ten years, after which time they will be destroyed. PCSE have provided an [application form](#) which can be used to request copies of a deceased patient's record.

In the cases of *any* third-party requests, Jenner House Surgery will ensure that the patient has consented to the disclosure of this information by means of a valid signature of the patient.

In accordance with the GDPR, patients are entitled to receive a response within the maximum given time frame of one calendar month from the date of submission of the DSAR. In order to ensure full compliance regarding DSARs, Jenner House Surgery will adhere to the guidance provided in the GDPR.

In the case of complex or multiple requests, the data controller may extend the response time by a period of two months. In such instances, the data subject must be informed and the reasons for the extension given.

Under [The Data Protection \(Subject Access Modification\) \(Health\) Order 2000](#), Jenner House Surgery will ensure that an appropriate healthcare professional manages all access matters. Jenner House Surgery there are a number of such professionals, and wherever possible the individual most recently involved in the care of the patient will review and deal with the request. If for some reason they are unable to manage the request, an appropriate professional will assume responsibility and manage the access request.

Furthermore, to maintain GDPR compliance, the data controller at Jenner House Surgery will ensure that data is processed in accordance with Article 5 of the GDPR and will be able to demonstrate compliance with the regulation (see GDPR policy for detailed information). Data processors at Jenner House Surgery will ensure that the processing of personal data is lawful and at least one of the following applies:

- The data subject has given consent to the processing of his/her personal data for one or more specific purposes
- Processing is necessary for the performance of a contract to which the data subject is party, or in order to take steps at the request of the data subject prior to entering into a contract
- Processing is necessary for compliance with a legal obligation to which the controller is subject
- Processing is necessary in order to protect the vital interests of the data subject or another natural person

For providing a copy of a deceased patient's medical records, a fee not exceeding the cost of making the copy and postal costs may be charged; this fee must be reasonable and fully justifiable.³

Inactive patients: will be asked to approach their new Practice for their medical records.

3.3 Procedure for access

A DSAR form (Annex A) must be completed and passed to the data controller; all DSARs should be processed free of charge unless they are either complex, repetitive or unfounded (see GDPR Policy). The GDPR states that data subjects should be able to make access requests via email. Jenner House Surgery is compliant with this and data subjects can complete an e-access form and submit the form via email.

Upon receipt of a DSAR, Jenner House Surgery will record the DSAR within the health record of the individual to whom it relates, as well as annotating the DSAR log (template provided at Annex B).

³ [BMA Guidance – Access to health records](#)

Furthermore, once processed, an entry onto the health record should be made, including the date of postage or the date the record was collected by the patient or authorised individual.

Individuals will have to verify their ID⁴ at Jenner House Surgery and it is the responsibility of the data controller to verify all requests from data subjects using reasonable measures. The use of the practice's Data Subject Access Request (DSAR) form supports the data controller in verifying the request. In addition, the data controller is permitted to ask for evidence to identify the data subject, usually by using photographic identification, i.e. a driving licence or passport.

The process upon receipt of a DSAR form is clearly illustrated at Annex C, which is an aide-memoire/flow diagram.

Patients are required to collect their medical records in person, bringing with them valid identification as outlined on the request form. Patients may request the records are posted to them, for which they must pay for postage and the mail must be sent tracked and recorded delivery. Payment is to be made before the SAR is processed.

A poster explaining how to access health records, for use in waiting-room areas, can be found at Annex D.

3.4 Additional Privacy Information notice

Once the relevant information has been processed and is ready for issue to the patient, it is a requirement, in accordance with Article 15 of the General Data Protection Regulation (GDPR), to provide an Additional Privacy Information notice (APIn), the template for which can be found at Annex E.

3.5 Third-party requests

Third-party requests will continue to be received following the introduction of the GDPR. The data controller must be able to satisfy themselves that the person requesting the data has the authority of the data subject.

The responsibility for providing the required authority rests with the third party and is usually in the form of a written statement or consent form, signed by the data subject.

3.6 Summary

Having a robust system in place will ensure that access to health records is given only to authorised personnel. Patient confidentiality is of the utmost importance and any third-party requests must be accompanied by a valid patient signature. Staff are to adhere to this guidance at all times and where doubt exists, they are to discuss their concerns with Jenner House Surgery.

Data Protection Officer for the Practice is Caroline Sims.

⁴ Good Practice Guidance on ID Verification

<https://www.england.nhs.uk/wp-content/uploads/2015/03/identity-verification.pdf>

Responding to SARs – Practice options

1. The Practice can agree. If the Practice agrees to an SAR, we must respond within one month and include all the data we hold on the data subject. Providing all the data you hold 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 still have to justify why within the universal one-month deadline and explain how the data subject can complain against your decision. One obvious reason for declining is if the data has not changed since a previous request.
3. The Practice can say it requires more time. Practices can inform a patient they require extra time, where they decide it will take longer than a month to collate and supply the data. In this case the Practice will tell the patient this within the usual one-month deadline and The Practice will 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 20 years practices hold masses of data on our patients, so a new option has been introduced: Practices can supply less than the entire record by mutual agreement.

Annex A – Application form for access to health records

JENNER HOUSE SURGERY

APPLICATION FORM FOR ACCESS TO HEALTH RECORDS in accordance with the General Data Protection Regulation (GDPR) DATA SUBJECT ACCESS REQUEST

This form must be completed in blue or black ink and signed in order for us to process your request.

Section 1: Patient details

Surname		Maiden name	
Forename		Title (i.e. Mr, Mrs, Ms, Dr)	
Date of birth		Address:	
Telephone number		Postcode:	
NHS number (if known)		Hospital number (if known)	

Section 2: Record requested

The more specific you can be, the easier it is for us to quickly provide you with the records requested. Record in respect of treatment for: (e.g. leg injury following a car accident)

Please provide me with a copy of all records held	
Please provide me with a copy of records between the dates specified below:	
Please provide me with a copy of records relating to the incident specified below:	
Please provide me with a copy of records relating to the condition specified below:	

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Section 3: Details and declaration of applicant

Please enter details of applicant if different from Section 1

Surname		Title (Mr, Mrs, Ms, Dr)	
Forename(s)		Address	
Telephone number		Postcode	

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 records referred to above under the terms of the GDPR.

Please tick:

- I am the patient
- I have been asked to act by the patient and attach the patient's written authorisation
- I have full parental responsibility for the patient and the patient is under the age of 18

and:

- has consented to my making this request, or
- is incapable of understanding the request (delete as appropriate)
- I have been appointed by the court to manage the patient's affairs and attach a certified copy of the court order appointing me to do so
- I am acting *in loco parentis* and the patient is incapable of understanding the request
- I am the deceased person's Personal Representative and attach confirmation of my appointment (Grant of Probate/Letters of Administration)
- I have written, and witnessed, consent from the deceased person's Personal Representative and attach Proof of Appointment
- I have a claim arising from the person's death (Please state details below)

Signature of applicant: Date:

You are advised that the making of false or misleading statements in order to obtain personal information to which you are not entitled is a criminal offence which could lead to prosecution.

Section 4: Proof of identity

Please indicate how proof of ID has been confirmed. Please select 'A' or 'B':

	Method in which identity is confirmed	Option taken	Documents attached
A	Attached copies of documents as noted in section 4A below	Yes/No	If Yes, please indicate here which documents have been attached
B	Countersignature (section 4B). This should only be completed in exceptional circumstances (e.g. in cases where the above cannot be provided)	Yes/No	Please indicate reason why this section was completed

4A – Evidence

Evidence of the patient's and/or the patient's representative identity will be required. Please attach copies of the required documentation to this application form. Examples of required documentation are:

	Type of applicant	Type of documentation
A	An individual applying for his/her own records	One copy of identity required, e.g. copy of birth certificate, passport, driving licence, plus one copy of a utility bill or medical card, etc.
B	Someone applying on behalf of an individual (Representative)	One item showing proof of the patient's identity and one item showing proof of the representative's identity (see examples in 'A' above)
C	Person with parental responsibility applying on behalf of a child	Copy of birth certificate of child & copy of correspondence addressed to person with parental responsibility relating to the patient
D	Power of Attorney/Agent applying on behalf of an individual	Copy of a court order authorising Power of Attorney/Agent plus proof of the patient's identity (see examples

		in 'A' above)
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4B – Countersignature

This section is to be completed by someone (other than a member of your family) who can vouch for your identity. This section may be completed if 4A cannot be fulfilled.

I (insert full name).....

Certify that the applicant (insert name).....

Has been known to me personally as for years
(Insert in what capacity, e.g. employee, client, patient, relative etc.)

and that I have witnessed the signing of the above declaration. I am happy to be contacted if further information is required to support the identity of the applicant as required.

Signed Date

Name Profession

Address

.....
Daytime telephone number

Additional notes

Before returning this form, please ensure that you have:

- a) signed and dated this form
- b) enclosed proof of your identity or alternatively confirmed your identity by a countersignature
- c) enclosed documentation to support your request (if applying for another person's records)

Incomplete applications will be returned; therefore please ensure you have the correct documentation before returning the form.

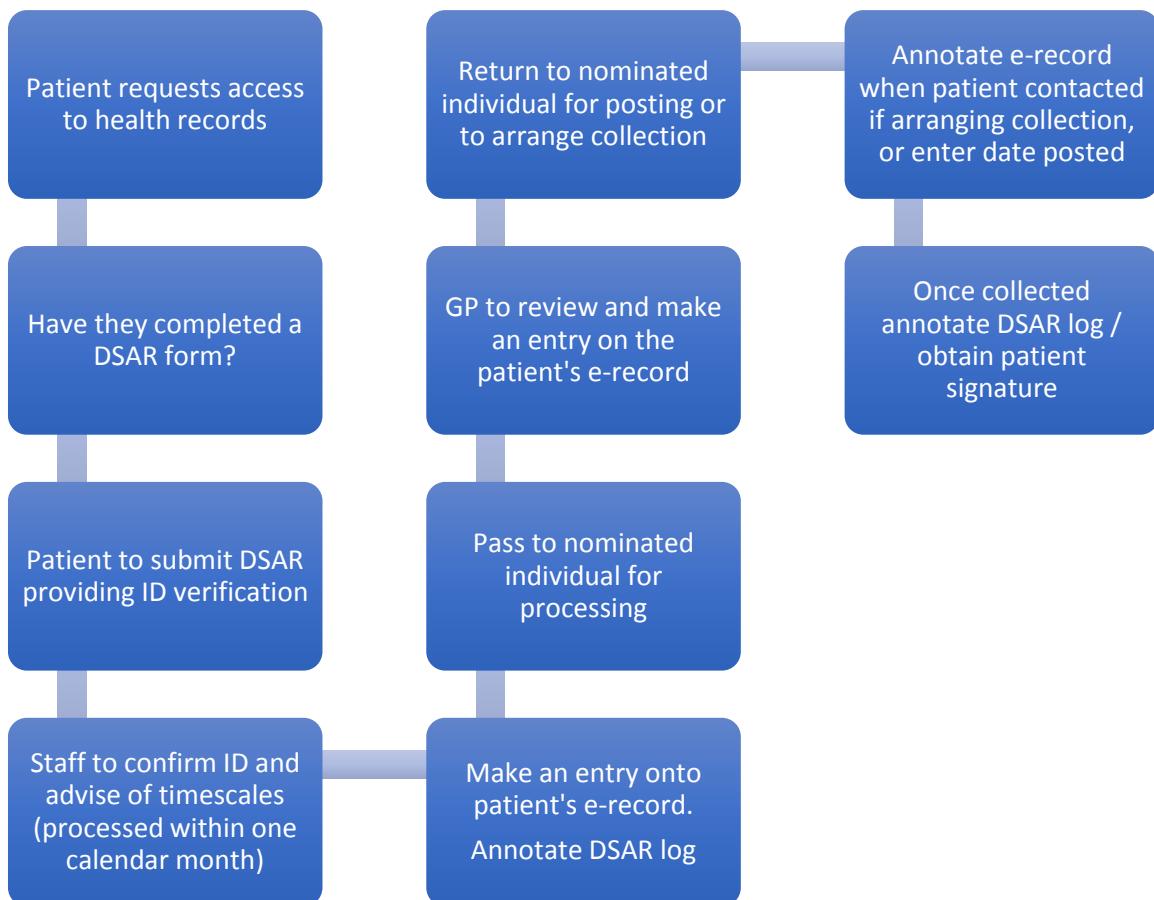


Annex B – Data Subject Access Request log

Data Subject Access Request log Jenner House Surgery

Annex C – DSAR desktop aide-memoire

Jenner House Surgery Data Subject Access Request desktop aide-memoire



Annex D – Access poster

ACCESSING YOUR MEDICAL RECORDS

JENNER HOUSE SURGERY

Introduction

In accordance with the General Data Protection Regulation, patients (data subjects) have the right to access their data and any supplementary information held Jenner House Surgery; this is commonly known as a data subject access request (DSAR). Data subjects have a right to receive:

- Confirmation that their data is being processed
- Access to their personal data
- Access to any other supplementary information held about them

Options for access

As of April 2016, practices have been obliged to allow patients access to their health record online. This service will enable the patient to view **coded** information held in their health record. Prior to accessing this information, you will have to visit the practice and undertake an identity check before being granted access to your records.

In addition, you can make a request to be provided with copies of your health record. To do so, you must submit a Data Subject Access Request (DSAR) form; this can be submitted electronically and the DSAR form is available on the practice website. Alternatively, a paper copy of the DSAR is available from reception. You will need to submit the form online or return the completed paper copy of the DSAR to the practice. Patients do not have to pay a fee for copies of their records.

Time frame

Once the DSAR form is submitted, Jenner House Surgery will process the request within one calendar month.

Exemptions

There may be occasions when the data controller will withhold information kept in the health record, particularly if the disclosure of such information is likely to cause undue stress or harm to you or any other person.

Data controller

At Jenner House Surgery the data controller is Dr Ku Rama (Deputy: Mrs Marie Edwards) and should you have any questions relating to accessing your medical records, please ask to discuss this with the named data controller.

Signed

Dr Ku Rama
Data controller

Jenner House Surgery

Mrs Marie Edwards
Deputy Data Controller

Jenner House Surgery

Annex E – Additional Privacy Information notice

Jenner House Surgery
159 Cove Road
Farnborough
Hampshire
GU14 0HQ
01252 548141

Dear [insert patient name],

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information Jenner House Surgery holds about you. Please find enclosed all relevant information. To comply with Article 15 of the General Data Protection Regulation, we are obliged to advise you of the following:

1. **The purposes of the processing:** *Your data is collected for the purpose of providing direct patient care. In addition, the practice contributes to national clinical audits and will send information such as demographic data, please see Patient Information Leaflet for more details*
2. **The categories of data concerned:** *We process your personal and health data in accordance with Article 9 of the GDPR.*
3. **The recipients or categories of recipients:** *Your data has been shared with [insert organisation(s)] to enable the provision of healthcare.*
4. **How long your information will be retained:** *Records are retained in accordance with the NHS retention schedule; GP records are retained for a period of 10 years following the death of a patient.*
5. **The right to rectification or erasure of personal data:** *Should you find any inaccuracies with the data we hold, please advise us of the inaccuracies and we will discuss with you how to rectify these.*
6. **The right to lodge a complaint with the supervisory authority:** *In the unlikely event that you are unhappy with any element of our data-processing methods, you have the right to lodge a complaint with the ICO. For further details, visit: ico.org.uk and select 'Raising a concern'.*
7. **How we obtained any of the data we hold about you:** *[Insert name] NHS Hospital Trust has provided us with [insert brief explanation of what has been provided] following your [admission / referral / specialist appointment].*
8. **Any automated processing activities:** *This is not applicable for your data.*

Should you have any questions relating to the information provided in this letter or about the copies of information we have provided, please contact Mrs Marie Edwards at the practice on 01252 548141.

Yours sincerely,

Mrs Gerry Clark,
Medical Records Administrator
Jenner House Surgery

Annex F – Practice Disclaimer

Jenner House Surgery
159 Cove Road
Farnborough
Hampshire
GU14 0HQ
01252 548141

Dear ,

On [insert date], you submitted a Subject Access Request (SAR) in order to receive copies of the information that Jenner House Surgery holds about you. You have been provided with this information, along with an additional privacy information notice in order to comply with the General Data Protection Regulation (GDPR).

You are responsible for the confidentiality and safeguarding of the copies of your medical records which have been provided for you. This practice accepts no responsibility for the copies once they leave the premises.

By signing this form, you are accepting full responsibility for the security and confidentiality of the copies of your medical records.

Patient name: [Insert full name]

Patient ID number: [Insert system ID number]

Patient signature: