

Access to Health Records

This factsheet looks at your right to see your health records and how to do this. It explains what to do if you think the information on your health records is wrong. In this factsheet, when we say 'record' or 'records', we mean your health record.



KEY POINTS

- When an NHS professional sees you, they will update your record with information about your illness and treatment.
- Records are kept in different places. If you have seen mental health services, your record is kept there. Your GP will not have the information.
- You can see your records. Your doctor can withhold information if it may harm your physical or mental health.
- From the 25th May 2018 you should be able to see a copy of your record within 1 month.
- Other people, such as an employer or insurer, can only see your records if you agree.
- If you feel something on your records is wrong you cannot usually delete it. You can ask your doctor to add a note to show that you disagree.
- You should be able to see your records online if you sign up for 'Patient Online'.
- You can have a 'summary care record' which gives the NHS important information about your health. This helps them to deal with emergencies. You don't have to have one if you don't want to.

From the 25th May 2018 the General Data Protection Regulations (GDPR) come into force. These regulations will replace the Data Protection Act 1998. We have provided updates throughout this factsheet in line with GDPR changes. For further information and the latest updates to GDPR you can see the NHS Digital website here: <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidance>

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1. What are my records?

When you see a health professional, they will update your health record with information about your condition and treatment. These records may be on a computer or handwritten.

Your record has information about your:

- diagnosis,
- reports,
- letters, and
- test results.

Health records in mental health teams may have information about your care plan and time spent in hospital.

The NHS keeps detailed records locally so the person in charge of your treatment can see it. This means your GP surgery will hold records of your GP visits. Your mental health team will keep records of your appointments with them.

From the 25th May 2018 local NHS services must have a 'data protection officer'. This is a professional who is responsible for processing all the data they record.¹

Your GP records and mental health team records are not kept together. Specialist services and your GP may share some important information about your care.² This may include:

- referral letters,
- your diagnosis,
- reports, and
- results.

Summary Care Records

When you are treated outside your GP surgery, healthcare professionals cannot access your records. They may be able to see a 'summary care record' instead. This holds important information about your health. Your GP will automatically start a summary care record.

The record will have information about:³

- your medication,
- your allergies,
- any bad reactions to medications you have tried, and
- your name, address, date of birth and NHS number.

For example, in an emergency doctors could look at the record to see if you are allergic to any medications. This can help them treat you properly.

You can put more information on your summary care record if you want. You could put information about long term health conditions or any difficulties you have.⁴ Your GP can also put more information in the record. They must usually have your agreement to do this. This is called giving your consent. If you can't consent, your GP must justify why they think the extra information is needed.⁵

Health professionals have to ask you before looking at your record. But if you are unconscious or can't give consent, they can look at your record without your permission. If they do this they have to make a note on your record to explain why.⁶

You can ask to see a list of who has looked at your summary care record.⁷ We have explained how to do this in Section 4 below.

If you don't want a summary care record contact your surgery and tell them. Or you can fill in a form and hand it into your surgery. This is called 'opting out'.⁸ You can find a copy of the form here:

<https://digital.nhs.uk/summary-care-records/patients>.

2. How long are my records kept?⁹

Records of your care are made every time you go to an NHS service. These services will keep your records for different lengths of time. The length of time depends on where the record is kept.

Normally records are kept for up to 8 years after you were last seen by the service or discharged. These are called 'adult health records'. There are some exceptions explained below.

GP Records

Your GP surgery will create a record when you register there. This will be kept and updated for as long as you are still registered there.

Your GP record will be kept for 10 years after you die or if you move to another country.

Temporary patients

If you register as a temporary patient at a GP surgery, a record will be made of your appointment. This will be kept for a maximum of 2 years after you were treated there. In most cases this record will be sent to the GP you are registered with. Your normal GP surgery will include it in the record they keep.

Electronic patient records

Some NHS services and GP surgeries have electronic patient records. These records should also follow the rules explained above. At the end of the time period, the record should be destroyed. Or people using the computer system should not be able to access them.

Mental Health Records

These include details of any treatment you may have been given under the Mental Health Act 1983. This includes prisoners transferred to hospital for treatment under the Mental Health Act.

Your records will be kept for 20 years after you were last seen, or discharged from the act. Or if you die the records will be kept for 8 years.

Your mental health records can be kept for over 20 years if it is an ongoing case.

If your case was simple and you were treated in the community with a full recovery, then your record may be treated as a normal adult health record and only kept for 8 years.

Prison health records

Any records of treatment you received in prison are treated as normal adult health records. This means they are kept for a maximum of 8 years

after you are discharged. Usually a note summarising the care you received is sent to your GP.

Records of long term illness or an illness that could reoccur

You might have a long term or reoccurring health condition that means you need a lot of care. In these cases the record could be kept for up to 30 years after you are discharged. If you die, then your records can only be kept for 8 years after.

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3. Why might I want to see my records?

There are different reasons why you might want to see your health records. For example you might want to:

- check if there are any mistakes in your records,
- find out background information about your healthcare, or
- get evidence for a complaint about your healthcare.

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4. How can I see my records?

Ask the service

Before 25th May 2018 you have the right to see your health records under the Data Protection Act 1998.¹⁰ You will still have this right under the General Data Protection Regulations (GDPR) from the 25th May 2018.¹¹

Your GP, or another professional, can show you your records any time, but they do not have to. If they refuse, you could try making a 'subject access request'. We have explained this below.

You could ask to see your records during an appointment or over the phone. If they agree, this is a quick and easy way to see your records.¹² They could show you the notes on paper or on a screen. But they might not give you a copy of your records this way. You may have to make a subject access request to get a copy or your local NHS trust can tell you how to apply.

Patient Online

Some GP surgeries are letting patients sign up to 'Patient Online'. This lets you look your health records online, as well as book appointments.¹³ Not all GP surgeries have set this up yet. Ask your GP surgery if you can sign up for Patient Online.

Subject Access Requests

You can use your right to have a copy of your health records under section 7 of the Data Protection Act 1998.¹⁴ This will be replaced by Article 15 of the General Data Protection Regulations (GDPR) from the 25th May 2018.¹⁵ This is called making a 'subject access request'.¹⁶

From the 25th May 2018 you can make a subject access request in writing or by speaking to the service. The service might have a form they ask you to fill out.¹⁷ Your local Patient Advice and Liaison Service (PALS) might be able to help you with a subject access request. You can search for your local PALS office at: www.pals.nhs.uk/officemapsearch.aspx.

In your letter, give:¹⁸

- your name,
- address,
- date of birth, and
- any other information which would help locate your file.

From the 25th May 2018, explain that you are making a subject access request under Article 15 of the General Data Protection Regulations 2018. You do not have to tell them why you want to see your records. You may have to show them some proof of your identity.

You do not have to fill in a special form when asking to see your records. But some services might ask you to, to make the process faster. Ask the service first if you are unsure. If you can, you should send the letter by recorded delivery. You can use also the sample form at the end of this factsheet.

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5. Can anyone else see my records?

Your health records are confidential. The NHS should not show your health records to anyone without your consent.

What if an employer or insurer wants to know about my medical history?^{19,20}

If your employer or insurer wants health information, they may ask your doctor for a medical report. They will not ask for your full medical records. Your doctor will need your consent to give them this information. This comes under the Access to Medical Reports Act 1988.

What if I lack capacity to access my medical records?²¹

Mental capacity means being able to understand and make decisions. If you don't have capacity to ask for your records then someone else may do this for you.

You can find more information about:

- Mental Capacity, and
- Confidentiality

at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

6. Do I have to pay to see my records?

Before the 25th May 2018, If NHS staff have updated your records in the last 40 days then you may be able to view them for free.²² If you need a copy, or they were last updated more than 40 days ago, the NHS can charge you.

The most the NHS can charge you for an electronic copy of your record is £10.²³ If your records are handwritten and need to be photocopied, the record holder can charge you up to £50.^{24, 25}

However, from the 25th May 2018 the General Data Protection Regulations (GDPR) changes these rules. From this date, there should be no charge for a copy of your records, unless you are asking for a very large amount of information.²⁶

7. When will I get my records?

Before the 25th May 2018, once you have given the NHS all the information they need to identify you, and paid the fee, they have 40 days to send it to you.²⁷

From after the 25th May 2018, the NHS has only 1 calendar month to get your information to you. This can be extended for a further 2 months if you have made multiple requests, or the information you have asked for is very complex.²⁸ The NHS tries to deal with requests within 21 days.²⁹

8. Can the NHS keep information from me?

Under the Data Protection Act, the NHS can hold back information that would cause serious harm to your physical or mental health or anyone else's.³⁰ The record holder should explain why they decided to keep information from you.

It is expected that new data protection law in 2018 will maintain these rules around holding back information.³¹

Your records may have information about other people. The NHS should ask their permission to share this information with you. If the person does not agree, the NHS may not show you this information. If the NHS cannot ask for permission, then it will need to decide if they should share this information with you. They will decide this on a case-by-case basis.³²

If you think that information is missing and the NHS has not told you why, contact the record holder to ask why.

9. What if the information on my record is wrong?

The information in your records should be correct and up to date.³³ Some of the information will be a professional's opinion. A health professional may have written an opinion about you that you think is wrong. The NHS will usually not remove these opinions from your record. They need to keep this information because it shows why they made decisions about your care and treatment.³⁴ It is unlikely that the NHS will delete or remove information from your records unless it is factually incorrect, like the wrong address or date of birth.

If your doctor agrees that the information is wrong, they may add a correction to your record. If your doctor doesn't agree with you, you should be able to add a note showing this.³⁵

You should write to the record holder to tell them what you think is wrong and explain why. It's a good idea to send this letter by recorded delivery.

10. Can I see my relative's records when they die?

When someone dies, their health records are still confidential. Only certain people can see them.

The NHS was previously able to charge you for getting copies of these records, but this was changed by the Data Protection Act 2018. Now you cannot be charged for these records.³⁶

Access to your relatives' health records comes under the 'Access to Health Records Act 1990.

Personal representatives and people with a claim

If you are a personal representative, or if you have a claim from the person's death, you can apply to see the persons' medical records.³⁷

Being someone's personal representative means you deal with their affairs after they have died. This includes dealing with their property and bank accounts.

The law is unclear about what it means to have a claim from someone's death, but this may include people who can take an inheritance. You can read more about being a representative here: <https://www.gov.uk/wills-probate-inheritance>.

You need to contact the record holder with enough information to identify the records. You should include evidence to show you are the personal representative or that you have a claim.³⁸ You may need to show a death certificate, the grant of representation or a copy of the will. You may also need to show proof of your identity.

If the person left a note in their records saying they did not want you to see them, then the NHS may hold them back.³⁹

Other people

You can apply to see someone's health records if you do not fall into the above group. The NHS should think about:⁴⁰

- if the person who died said if they wanted their records to be shared,
- if anyone will be distressed if the records are shared,
- the views of any surviving family,
- how long ago the person died,
- how much information you are asking for,
- why you want the information, and
- if you had a relationship with the person who died.

Coroners

When someone dies unexpectedly, the coroner can see their health records. They may get a copy to prepare for the inquest into the person's death.⁴¹

You can find out more about '**Inquests**' at www.rethink.org. Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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11. How can I complain?

You may want to complain because:

- the NHS has not dealt with your request within 40 days,
- the NHS says you cannot see your records,
- the NHS doesn't give you all the information that you asked for, or
- you disagree with the information in your records.

You can use the NHS complaints procedure to try and resolve these problems.

You can find more about '**Complaints**' at www.rethink.org. Or call 0121 522 7007 and ask for the information to be sent to you.

The Information Commissioner's Office can look into your complaint and ask the NHS to solve the problem. The Information Commissioner can only get involved if you have already tried to resolve your issue by making an NHS complaint. Their details are in the Useful Contacts section.



Information Commissioner's Office (ICO)

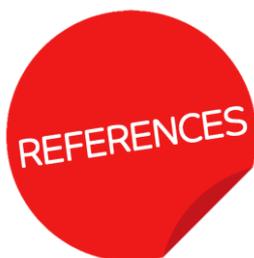
This organisation regulates the use of the Data Protection Act in organisations such as the NHS. They have a helpline you can call for information.

Telephone: 0303 123 1113 (9am to 5pm Monday to Friday)

Address: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Email: Online form here: <https://ico.org.uk/global/contact-us/email/>

Website: ico.org.uk



¹ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 29.

² Information Governance Alliance. *The Records Management Code of Practice*. London: Information Governance Alliance; 2016. Page 27.

³ NHS Digital. *Summary Care Records (SCR)*.

<http://systems.hscic.gov.uk/scr/patients/what> (accessed 04 May 2017).

⁴ NHS Digital. Additional information in SCR.

<https://digital.nhs.uk/summary-care-records/additional-information> (accessed 04 May 2017).

⁵ As note 4.

⁶ NHS Digital. *Summary Care Records (SCR)- information for patients*.

<https://digital.nhs.uk/summary-care-records/patients> (accessed 04 May 2017).

⁷ As note 6.

⁸ As note 6.

⁹ Information Governance Alliance. *The Records Management Code of Practice*. London: Information Governance Alliance; 2016. Appendix Three, Page 53.

¹⁰ s7, Data Protection Act 1998 c29.

¹¹ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 21.

¹² NHS Choices. *Your health and care records?*

http://www.nhs.uk/NHSEngland/thenhs/records/healthrecords/Pages/what_to_do.aspx (accessed 04 May 2017).

¹³ NHS England. *About Patient Online*

<https://www.england.nhs.uk/ourwork/pe/patient-online/about-the-prog/> (accessed 04 May 2017).

¹⁴ As note 10 (DPA 1998), s7.

¹⁵ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 21.

¹⁶ Information Governance Alliance. *The General Data Protection Regulation. What's new*. Page 21

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- ¹⁷ Information Commissioners Office. *Right of Access*. <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/right-of-access/> (accessed 24 April 2018).
- ¹⁸ Information Commissioners Office. *Find out how to request your personal information*. <https://ico.org.uk/for-the-public/personal-information/> (accessed 04 May 2017).
- ¹⁹ British Medical Association. *Access to medical reports*. London: British Medical Association; 2009. Page 1.
- ²⁰ Association of British Insurers. *ABI Principles for Requesting and Obtaining Medical Information Electronically from General Practitioners*. <https://www.abi.org.uk/news/news-articles/2016/12/new-guiding-principles-on-medical-requests-published/> (accessed 04 May 2017).
- ²¹ NHS Choices. *Can I access someone else's medical records (health records)?* <http://www.nhs.uk/chq/Pages/access-to-someone-elses-medical-or-health-records.aspx> (accessed 04 May 2017).
- ²² Reg 6(3)(a)(ii), *Data Protection (subject access) (Fees and Miscellaneous Provisions) Regulations 2000*. SI 2000/191. London: TSO; 2000.
- ²³ As note 22 (SI 2000/191), Reg 3.
- ²⁴ As note 22 (SI 2000/191), Reg 6(2).
- ²⁵ British Medical Association. *Medical records access and copying fees*. <https://www.bma.org.uk/advice/employment/fees/medical-records> (accessed 04 May 2017).
- ²⁶ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 21.
- ²⁷ As note 10 (DPA 1998), s7(8).
- ²⁸ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 21.
- ²⁹ Department of Health. *Guidance for Access to Health Records Requests*. London: Department of Health; 2010. Page 10, para 16.
- ³⁰ Reg 5(1), *Data Protection (Subject Access Modification) (Health) Order 2000*. SI 2000/413. London: TSO; 2000.
- ³¹ Information Governance Alliance. *The General Data Protection Regulations. What's new*. London: Information Governance Alliance; 2018. Page 21.
- ³² As note 10 (DPA 1998), s7(4).
- ³³ As note 10 (DPA 1998) Sch 1, para 4.
- ³⁴ As note 29, at page 12-13, para 29.
- ³⁵ As note 29, at page 13, para 30-31.
- ³⁶ sch 19, s38, Data Protection Act 2018 c12.
- ³⁷ s3(1)(f), Access to Health Records Act 1990 c23.
- ³⁸ As note 29, page 14, para 41.
- ³⁹ As note 37 (AHRA 1990), s4(3).
- ⁴⁰ As note 29, at page 14-15, para 43.
- ⁴¹ As note 29, at page 26.

Sample letter to ask for your medical records

Adapted from Information Commissioner's Office sample letter, available at
<https://ico.org.uk/for-the-public/personal-information/>

[Your full address]
[Phone number]
[The date]

[Name and address of the NHS body]

Dear Sir or Madam

Subject access request

[Your full name, date of birth, address and any other details to help identify you and the information you want.]

Please supply the information about me I am entitled to under the General Data Protection Regulations relating to:

[give specific details of the information you want]

- *your medical records [between 2006 & 2009] held by Dr 'C' at 'D' hospital*

If you need any more information from me, please let me know as soon as possible.

It may be helpful for you to know that a request for information under the General Data Protection Regulations should be responded to within 1 calendar month.

If you do not normally deal with these requests, please pass this letter to your Data Controller. If you need advice on dealing with my request, the Information Commissioner's Office can assist you and can be contacted on 0303 123 1113 or at www.ico.gov.uk

Yours faithfully

[Signature]

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This factsheet is available
in large print.

Rethink Mental Illness Advice Service

Phone 0300 5000 927

Monday to Friday, 9:30am to 4pm
(excluding bank holidays)

Email advice@rethink.org

Did this help?

We'd love to know if this information helped you.

Drop us a line at: feedback@rethink.org

or write to us at Rethink Mental Illness:

RAIS
PO Box 17106
Birmingham B9 9LL

or call us on 0300 5000 927.

We're open 9:30am to 4pm
Monday to Friday (excluding bank holidays)



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For further information
on Rethink Mental Illness
Phone 0121 522 7007
Email info@rethink.org



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Need more help?

Go to www.rethink.org for information on symptoms, treatments, money and benefits and your rights.

Don't have access to the web?

Call us on 0121 522 7007. We are open Monday to Friday, 9am to 5pm, and we will send you the information you need in the post.

Need to talk to an adviser?

If you need practical advice, call us on 0300 5000 927 between 9:30am to 4pm, Monday to Friday. Our specialist advisers can help you with queries like how to apply for benefits, get access to care or make a complaint.

Can you help us to keep going?

We can only help people because of donations from people like you. If you can donate please go to www.rethink.org/donate or call 0121 522 7007 to make a gift. We are very grateful for all our donors' generous support.



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