



## Review Sheet

Last Reviewed  
19 Mar '21Last Amended  
19 Mar '21Next Planned Review in 12 months, or  
sooner as required.

Business impact



Changes are important, but urgent implementation is not required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This policy has been updated and content regarding subject access requests has been removed. The guidance and procedure for Subject Access Requests (SARs) is available separately in the Subject Access Requests Policy and Procedure. References have been reviewed and updated.

Relevant legislation:

- Access to Medical Reports Act 1988
- Equality Act 2010
- Freedom of Information Act 2000
- The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- Human Rights Act 1998
- Medical Act 1983
- Mental Capacity Act 2005
- Public Interest Disclosure Act 1998
- Access to Health Records Act 1990
- Data Protection Act 2018

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Care Quality Commission (CQC), (2019), *Check the way you handle personal information meets the right standards*. [Online] Available from: <https://www.cqc.org.uk/guidance-providers/all-services/check-way-you-handle-personal-information-meets-right-standards-0> [Accessed: 19/3/2021]
- Author: Information Commissioner's Office (ICO), (2018), *Your data matters*. [Online] Available from: <https://ico.org.uk/your-data-matters/> [Accessed: 19/3/2021]
- Author: Care Quality Commission (CQC), (2018), *Meeting the Accessible Information Standard*. [Online] Available from: <https://www.cqc.org.uk/guidance-providers/meeting-accessible-information-standard> [Accessed: 19/3/2021]
- Author: Information Commissioner's Office (ICO), (2020), *What is the Freedom of Information Act?*. [Online] Available from: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/what-is-the-foi-act/> [Accessed: 19/3/2021]
- Author: British Medical Association (BMA), (2021), *Access to health records*. [Online] Available from: <https://www.bma.org.uk/advice-and-support/ethics/confidentiality-and-health-records/access-to-health-records> [Accessed: 19/3/2021]
- Author: NHS Digital, (2021), *National Data opt-out*. [Online] Available from: <https://digital.nhs.uk/services/national-data-opt-out> [Accessed: 19/3/2021]
- Author: Legislation.gov.uk, (2020), *Access to Medical Reports Act 1988*. [Online] Available from: <https://www.legislation.gov.uk/ukpga/1988/28/section/4> [Accessed: 19/3/2021]
- Author: Information Commissioner's Office (ICO), (2020), *Guide to freedom of information*. [Online] Available from: <https://ico.org.uk/for-organisations/guide-to-freedom-of-information/?template=pdf&patch=0> [Accessed: 19/3/2021]
- Author: ICO, (2019), *Health and social care guidance*. [Online] Available from: <https://ico.org.uk/for-organisations/in-your-sector/health/> [Accessed: 19/3/2021]



Suggested action:	<ul style="list-style-type: none"><li>• Encourage sharing the policy through the use of the QCS App</li><li>• Share 'Key Facts' with all staff</li><li>• Develop training sessions for relevant staff</li><li>• Ensure relevant staff are aware of the content of the whole policy</li></ul>
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



## 1. Purpose

**1.1** To ensure Yewtree medical centre provides clear guidance for Patients to request access to information under the Data Protection Act 2018, the Access to Health Records Act 1990, and public requests for information under the Freedom of Information Act 2000.

**1.2** The guidance and procedure for Subject Access Requests (SARs) is available separately in the Subject Access Requests Policy and Procedure.

**1.3** To support Yewtree medical centre in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
CARING	HC3: How are people's privacy and dignity respected and promoted?
EFFECTIVE	HE3: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care, support and treatment?
RESPONSIVE	HR4: How are people's concerns and complaints listened and responded to and used to improve the quality of care?
SAFE	HS1: How do systems, processes and practices keep people safe and safeguarded from abuse?
WELL-LED	HW4: Are there clear responsibilities, roles and systems of accountability to support good governance and management?
WELL-LED	HW6: Is appropriate and accurate information being effectively processed, challenged and acted on?

**1.4** To meet the legal requirements of the regulated activities that {Yewtree medical centre} is registered to provide:

- | Access to Medical Reports Act 1988
- | Equality Act 2010
- | Freedom of Information Act 2000
- | The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- | Human Rights Act 1998
- | Medical Act 1983
- | Mental Capacity Act 2005
- | Public Interest Disclosure Act 1998
- | Access to Health Records Act 1990
- | Data Protection Act 2018



## 2. Scope

- 2.1** The following roles may be affected by this policy:
- | All staff
- 2.2** The following Patients may be affected by this policy:
- | Patients
- 2.3** The following stakeholders may be affected by this policy:
- | Family
  - | Advocates
  - | Representatives
  - | Commissioners
  - | External health professionals
  - | Local Authority
  - | NHS



## 3. Objectives

- 3.1** To ensure Yewtree medical centre effectively and consistently meets the legislative obligations when responding to statutory requests for information under the Data Protection Act 2018, the Access to Health Records Act 1990, and the Freedom of Information Act 2000.



## 4. Policy

- 4.1** Yewtree medical centre understands and will comply with its lawful obligations under the relevant legislation to provide information when requested as follows:
- | Access to the Health Records (AHR) of a deceased Patient requests
  - | Access to health records of a Patient by an authorised person when the Patient lacks the capacity to make such a decision
  - | Access to medical reports
  - | Freedom Of Information (FOI) requests
- 4.2** Yewtree medical centre will comply with the Accessible Information Standard for requests from Patients.
- 4.3** Yewtree medical centre will operate a robust data/documentation disposal system in accordance with the Archiving, Disposal and Storing of Records Policy and Procedure to avoid intentionally evading disclosure of information.



## 5. Procedure

### 5.1 Access to Deceased Patients Health Records

The Access to Health Records Act (AHRA) 1990 provides certain individuals with a right of access to the health records of a deceased Patient. These individuals are defined 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 Patient's estate.

Yewtree medical centre must be satisfied as to the identity of applicants, and they must provide as much information to identify themselves as possible. Where an application is being made on the basis of a claim arising from the Patient's death, applicants must provide evidence to support their claim. Personal representatives will also need to provide evidence of identity.

A request for access will usually be made in the same way as a SAR, ensuring that there is sufficient information to enable the correct records to be identified. The request must also give details of the applicant's right to access the records.

### 5.2 Access to Medical Reports

Yewtree medical centre may, on occasion, receive a request from a Patient's employer for a medical report. Yewtree medical centre must be satisfied that the Patient has given valid consent to the release of the information.

The Access to Medical Reports Act 1988 states that Patients must be offered a copy of their medical report and the opportunity to review it prior to submission to an organisation that has requested it, e.g. their employer or insurance company.

Under the Act, if a Patient expresses a wish to see a report before it is submitted, they must arrange to do this within 21 days. Yewtree medical centre will keep any report for six months and the Patient has the right to see the report during this period.

### 5.3 Freedom of Information (FOI) Requests

The Freedom of Information Act (FOIA) 2000 provides public access to information held by public authorities, including the NHS. The FOIA specifically defines general practice contractors providing general or personal medical services as public authorities in respect of information relating to the provision of those services. APMS practices are not designated as public authorities.

It covers any other information held by Yewtree medical centre, e.g. procedures, governance etc. It created new rights of public access to information held by General Practices in respect of information relating to the provision of those services.

The FOIA obliges Yewtree medical centre to respond to requests from anyone anywhere in the world about the information held and recorded in any form and creates a right of access to that information. Information requests made to Yewtree medical centre under the FOIA must be made in writing.

Yewtree medical centre will provide advice and assistance to enable equality of access for all to recorded information as this requirement may present difficulties for some requesters with communication issues or disabilities. Requests for information must include the requester's name, provide a postal or email address for the response and a description of the information being requested.

Yewtree medical centre must comply with a FOIA request within 20 working days. If Yewtree medical centre transfers the request to another public authority, for example, NHS England or the local Clinical Commissioning Group (CCG), then they also have 20 working days from receipt of the request to respond. Where a fee is required in line with the policy, the deadline will be extended until the fee is paid. Upon request, Yewtree medical centre will consider whether the request covers information which would be disclosed under the FOIA or, if it clearly does not apply, whether it falls within one of the absolute exemptions. If it is not for disclosure, Yewtree medical centre will issue a refusal notice setting out the reasons for non-disclosure.

If the request does not fall within an absolute exemption, then one of the qualified exemptions may apply and the public interest test will be considered. If this is the case, Yewtree medical centre may inform the requester they will revert back to the requester outside of the 20-day period if more time is required to apply the public interest test for disclosure. If it is for disclosure then it will be disclosed but, if not, then Yewtree medical centre will send a refusal notice to the requester setting out the reasons in full.

A refusal notice will be issued if the request is vexatious on the grounds it is:

- | A repeated request or substantially similar to a previous request and/or
- | Designed to inconvenience the recipient or cause annoyance or distress and/or
- | Irrelevant



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If Yewtree medical centre cannot identify or locate the information requested without further information, then it will ask for further clarification from the requester and the 20-day time limit will begin on receipt of that information.

If a request cannot be met because the information has been disposed of in the normal course of business whilst clearing emails, papers etc. then this is not for disclosure.

Once Yewtree medical centre has established the information requested can be disclosed, the requester will be informed of the costs of fulfilling that request. Payment will be requested and must be paid before the information is prepared and released to the requester.

#### **5.4 Third Party Access to Information**

Yewtree medical centre will only disclose Patient information in accordance with the requirements of the Data Protection Act 2018 and the common law duty of confidence.

When Yewtree medical centre receives a request for Patient information from a third party under a court order, a Health Professional Order (2001) in relation to fitness to practise or a coroner's request in relation to an unexpected or suspicious death, the Practice may disclose some or all of the information requested with or without the knowledge of the Patient.

Other investigatory bodies, e.g. the Police and HMRC, may request information and in doing so must provide Yewtree medical centre with a written explanation as to why the information is required stating the section of the Data Protection Act 2018 under which they are applying and the likely effect on an investigation or prosecution if it is not provided. Yewtree medical centre is not obliged to disclose Patient information in these circumstances and will consider all the relevant factors to inform the decision on what or how much information to disclose.

Unless third parties have a court order for original documents, all information disclosed will be copies or retyped extracts from files and records.

A complete record of the information request, the decision process and outcome will be kept to ensure that disclosures can be justified if necessary to the Information Commissioner and/or the individual concerned.

#### **5.5 CQC Access to Records**

The CQC inspection teams will look at medical records to assess the quality of care and corroborate this through the evidence seen in medical records. Due to the sensitivities about medical records held by Yewtree medical centre that may include private and personal information, medical records reviews will usually be carried out by a GP or nurse on the inspection team.

The CQC has powers under the Health and Social Care Act 2008 to access medical records for the purposes of checking that registered providers are meeting the requirements of registration. These powers are always balanced against the CQC's responsibilities under the Data Protection Act 2018, the Human Rights Act 1998 and the common law duty of confidentiality. The CQC will respect and protect the privacy and dignity of Patients and maintain their trust in the CQC and the confidentiality of their medical records. The CQC will only look at a Patient's medical records where there is a necessary reason to do so and where the intrusion on the privacy of that Patient is justified and proportionate, and they will always refer to and apply the 'necessity test' set out in the CQC's Code of Practice on Confidential Personal Information.

#### **5.6 National Data Opt-Out**

The national data opt-out allows a Patient to choose if they do not want their confidential patient information to be used for purposes beyond their individual care and treatment - for research and planning. Patients, or people acting for them by proxy, have control over setting or changing their own opt-out choice, and can change their mind at any time.

However, the opt-out will not apply to the CQC's access to records. Where Dr Ayesha Razvi makes the CQC aware that a Patient does not want the CQC to access their records this will be respected unless there is an overriding need to access that particular record.



## 6. Definitions

### 6.1 Requester

- | A requester is the person making the request for information whether that is the person whose personal information it is, another (or third-party) or someone requesting corporate information

### 6.2 Third Party

- | A third party is an individual other than the requester or any external organisation or company other than Yewtree medical centre. This includes family members of an individual, contractors working for, and partner organisations working with Yewtree medical centre

### 6.3 Personal Data

- | Any information relating to a person (a 'data subject') who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person

### 6.4 Data Subject

- | The identified or identifiable living individual to whom the personal data relates

### 6.5 Data Controller

- | A person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data

### 6.6 Data Protection Officer (DPO)

- | Under the GDPR, some organisations need to appoint a data protection officer who is responsible for informing them of and advising them about their data protection obligations and monitoring compliance with them



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | The Freedom of Information Act 2000 creates a right of access to recorded information a public authority holds which usually includes emails, correspondence, letters and minutes should therefore be disclosed
- | Not all information requested is automatically disclosable under the Freedom of Information Act 2000 and may fall within one of the absolute (making it non-disclosable) or qualified exemptions (leading to consideration of the public interest test)
- | The 20-day period for responding to a Freedom of Information request can be extended according to the need for additional consideration, clarification or if the data requested cannot be located without further information
- | Requests may be vexatious and lead to the issue of a refusal notice on these grounds
- | For information requested that is publicly available, it is not necessary for Yewtree medical centre to do anything more than inform the requester where it can be found
- | Information that has been disposed of in the normal course of business e.g. according to Practice policy, is not disclosable
- | The deliberate disposal of information to evade disclosure is a criminal offence
- | Care Quality Commission information about health and social care service performance is made publicly available by health watchdogs and national bodies, e.g. the Care Quality Commission with regularly published reports on availability and quality of care, as well as Patient experiences when required to do so
- | If a Patient expresses a wish to see a report before it is submitted, they must arrange to do this within 21 days
- | Yewtree medical centre will keep reports for six months and the Patient has the right to see the report during this period



## Key Facts - People affected by the service

People affected by this service should be aware of the following:

- | There are a number of different types of health record, and accessing them is free of charge to you
- | Healthcare professionals have a legal requirement to allow you to see your health records
- | GP records include information about your medication, allergies, vaccinations, previous illnesses and test results, hospital discharge summaries, appointment letters and referral letters
- | You can access your GP records, and nominate someone you trust to access them, through GP online services and the NHS app
- | Health and care records are confidential, so a person can only access your records if they are authorised to do so
- | If you think your health record is incorrect you must let your GP or other healthcare professional know so that they can update it if appropriate
- | The ICO's Freedom of Information Act model publication scheme, in which Yewtree medical centre is required to participate, contains information about the primary medical services Yewtree medical centre provides under contract to the NHS
- | You should discuss any queries or concerns that you have in relation to access to your own or Practice information with a member of the Practice Team



## Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

GDPR01 - Overarching GDPR Policy and Procedure

GDPR05 - Subject Access Requests Policy and Procedure

GAB06 - Archiving, Disposal and Storing of Records Policy and Procedure

**ICO Flowchart of Request Handling under the FOI Act:**

[https://ico.org.uk/media/1167/flowchart\\_of\\_request\\_handling\\_under\\_foia.pdf](https://ico.org.uk/media/1167/flowchart_of_request_handling_under_foia.pdf)



## Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- | Patients understand which personal and Practice information they can access and what to do if they want to make a request under the FOIA or the DPA arising from excellent practice communications
- | The Practice Team understands which Practice information is publicly available, which type of personal and Practice information must be requested under the DPA or FOI respectively and how this is done in order to be able to advise Patients correctly
- | The Practice Team understands which information does not need to be disclosed either under the FOIA or the DPA
- | Requests for information are received, processed and acted upon in accordance with legislation and timescales
- | The wide understanding of the policy is enabled by proactive use of the QCS App



## Forms

Currently there is no form attached to this policy.