

## Healthwatch Reading NHS Complaint Advocacy Service Subject Access Requests Policy

### Introduction

Legislation provides that an individual has the right to request access to their personal information that is held by an organisation. The information can be health records, employment records, or records which hold information relating to them as the subject.

Healthwatch Reading is required to ensure that it has a policy in place (and supporting procedures) to respond to Subject Access Requests under the Data Protection Act 2010.

This policy deals with the rights of data subjects provided under Section 7 of the Data Protection Act whereby individuals can request access to their data. The Data Protection Act 2010 came into force to implement and support the European Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The Act gives individuals (known as data subjects) the right, subject to certain exceptions, to request access and obtain copies of personal data about themselves that is held in either computerised or manual formats and any type of personal information that is recorded. Data subjects have access rights to their personal information irrespective of when the record was created. To exercise this right, an individual must make a written request for information. This is known as a subject access request.

This policy applies to those members of staff that are employed by Healthwatch Reading.

### Principles

Individuals have the right to request copies of their information which Healthwatch Reading holds and to also request certain information relating to the processing of their information including:

- A description of the information
- The purposes the information is used for
- The disclosures that are made or might be made
- The source of the data

Healthwatch Reading is required to respond to Subject Access requests promptly within 40 days (calendar days - not working days) of receipt of the request. Failure to do so is a breach of the Act and could lead to a complaint to the Information Commissioner (formerly the Data Protection Commissioner). If it is anticipated that a request will take longer than the

40-day period, the organisation must inform the applicant, giving an explanation of the delay and agree a new deadline. Failure to comply with a request for subject access, without valid justification, is treated as a serious matter and may be referred to the Information Commissioner. Such complaints are dealt with as a matter of priority and may lead to a full-scale investigation into an organisation's procedures and practices.

### Who can make a request?

Subject access requests can be made by:

- The individual themselves
- Individuals requesting access on behalf of a child for whom they have parental responsibility
- A representative nominated by the individual to act on their behalf, such as solicitors or a relative, where there is valid consent by the individual granting this authority
- In certain situations a person granted an attorney or agent by the Court of Protection on behalf of an adult who is incapable of consent

Subject access requests must be made in writing to Healthwatch Reading.

### Responsibilities

Healthwatch Reading has a duty to ensure that the relevant time limits are met and the information requested must be provided correctly and as requested, subject to any legal redactions.

All request details will be entered into a log and this will be maintained to monitor compliance to ensure all requests are answered in a timely manner.

#### 1. Chief Executive

The Chief Executive is the accountable officer and Data Controller for Healthwatch Reading. The Chief Executive is responsible for ensuring compliance with the Data Protection Act 2010.

#### 2. Complaints Advocacy Lead Officer

Within Healthwatch Reading the Complaints Advocacy Lead Officer will have overall responsibility for advising and screening information in response to requests.

#### 3. All Staff

All staff will comply with any request for personal data as quickly as possible, and will respond as soon as possible but before or by, a deadline communicated by the Complaints Advocacy Lead Officer. Who will confirm this date in writing to the person making the request. This deadline will be 40 calendar days.

## Subject Access Requests - the rights of individuals

The Data Protection Act 2010 ensures the transparency of data processing by obliging organisations to explain to individuals how their data is used and by providing the right of subject access under Section 7. Section 7 of the Act provides that individuals who request access to their data should:

- Be informed whether or not they are the subject of any data being processed by a data controller organisation; and
- Where data is being processed, be provided with an understandable copy of the information held about them on request.
- It should also be provided in a 'permanent form' unless the provision of the information in a permanent form would involve 'disproportionate effort'.

### Individuals also have the right to:

- A description of the personal data of which they are the data subject
- A description of the purposes for which the data are being processed or are to be processed
- Any information available to the organisation on the source of the applicant's data

### Consent Issues

In most cases the consent to access personal information will be provided by the individual who is requesting the information, however, there may be cases where the individual is unable to consent or the individual is a child. When an applicant is not able to produce written consent from the service user to access their information or is not able to evidence that he/she is entitled to access the information, Healthwatch Reading will be unable to process the request.

In the event that the applicant is a solicitor, the subject's written authority for release must be obtained.

### Exemptions to the Release of Information

The Data Protection Act 2010 makes provision for withholding information in certain circumstances, which must be considered when a request is received.

### Data identifying a Third Party

Where personal data relating to the applicant also identifies another individual, the applicant's right of access must be weighed against the other data subject's right to privacy. Healthwatch Reading should attempt, where practicable, to seek the consent of the third party to the release of their data. Where consent is obtained then the information can be released. Given the sensitive and confidential information that Healthwatch Reading holds, if there is any doubt about divulging third party information, legal advice must be sought before making a decision to release information.

### Other Agencies Records

Letters or reports from another agency, person or NHS organisation may be contained in a subject's records. Where this is the case the Chief Executive and Complaints Advocacy lead officer inspecting the records should consider the need to approach those agencies or persons to secure agreement for release of the those records

### Information can also be withheld for

- The prevention, detection or investigation of a crime
- National security or the armed forces
- The assessment or collection of tax
- Judicial or ministerial appointments
- If it is believed that there might be safeguarding issues.
- If serious concerns are raised about the effect the information may have on a subject's physical or mental health.

### Healthwatch Reading procedure for Subject access requests

1. All requests must be made in writing to Healthwatch Reading and passed to the Complaints Advocacy lead officer
2. The Complaints Advocacy lead officer will write to the subject within three working days to confirm that the information will be sent within 40 calendar days
3. The named Advocate will collate all information on databases as well as emails and responses, print and check for any third party information, which cannot be shared
4. The information will be checked by the Complaints Advocacy lead officer
5. All subject access requests must be logged so that dates for response can be monitored