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Subject Access Requests - A Guide for Third Parties

Where is the Subject Access Request (SAR)?

The SAR has been provided directly to the data subject (our patient).

What has changed?

The introduction of the General Data Protection Regulation and the Data Protection Act (DPA) 2018 require data controllers to clearly uphold data subject rights, including the right of access and subsequent to that, the right of rectification, the right to object and the right to complain to a supervisory authority, if warranted.

Is releasing the SAR ‘processing personal data’?

Disclosing the SAR information directly to the data subject is a legal obligation under Article 15 of the GDPR – it is a data subject right. Disclosing the SAR information, with or without the data subject’s consent (or form of authority), to a third party is processing of personal data. It would be the transfer of confidential medical information from one data controller (the GP surgery) to another data controller (a third party). Such disclosure to a third party is not a legal obligation.

Would the data subject know what information is likely to be in the SAR?

The data subject cannot possibly know or understand, until he/she has seen it in its entirety, what information is in their SAR. If the entire GP record, or a very significant part of it, has been requested, it will contain a large amount of very sensitive information that may have no bearing whatsoever on the purpose of the SAR. In our experience, patients do not appreciate the sheer volume and detail contained within what is arguably the most comprehensive, cradle-to-grave, primary care medical record anywhere in the world. Any consent for disclosure cannot be considered fully informed. The data subject has full capacity to receive and understand the SAR and make appropriate decisions on further sharing of that information with third parties. The data subject has total control over the record, as is their right.

Have we charged for providing the data subject with the SAR?

No. Neither the data subject nor the third party making the SAR on behalf of our patient has been charged, which is in line with Article 12(5) of the GDPR. By providing the SAR directly to our patient, we ensure that they are able to make as many copies of their information as they like, before deciding whether to disclose any or all of the information to a third party. This makes any repeat requests for their information - for which we are entitled to charge a fee - unnecessary.

To whom has the SAR been provided?

We have disclosed the SAR (in whatever format) directly to the data subject. We have provided/supplied the record as required by the GDPR. We, the data controller, are not

mandated to release the contents of a SAR to anyone else but the data subject, irrespective of the data subject's wishes. GP surgeries do not take instructions from patients.

How have we provided the SAR to our patient?

The SAR has been made available for collection, in person and with suitable ID, at our surgery site. Patients collect all other forms, letters, certificates, fit notes or directly made SARs that we provide them with. Our obligation is to provide the data subject with the SAR and it is their right to obtain it from us. The data subject is capable of collecting the SAR from the surgery, as far as we know. We are under no obligation to post, fax, courier or deliver in any other way, a printed SAR to the individual's home or any other address. It is a right of access to information, not a right to be posted information.

What about data subject rights?

A SAR is the data subject's right, not a third party right. It is a data subject access request, not a third party access request.

What about s184 and s185 of the DPA 2018?

Sections 184 and 185 of the DPA 2018 afford the data subject important protections and safeguards for their confidential medical information which would be bypassed, to his/her detriment, were we to disclose their SAR directly to a third party. It is not a criminal offence for a data controller to disclose a SAR to a data subject if it is believed, or suspected, that it could be an 'enforced' SAR. It becomes a criminal offence when a third party asks, 'invites', 'requests', requires, compels or coerces an individual to disclose the information so provided, to that third party, in relation to a contract for services or the provision of services. In addition, to require an individual to exercise their subject access rights and to supply their health records will render a term or condition of contract as void.

What does the ICO say about data controllers and enforced SARs?

The ICO states that 'if you have received the enforced SAR, you should be providing the information to the individual who has the right to receive such information'.

Has the SAR been amended or altered in any way?

We have disclosed the requested GP record to the data subject, suitably redacted to ensure that any information so released:

- Does not disclose anything that identifies any other individual (third party), unless that information was supplied directly by the data subject;
- Does not disclose anything that is likely to result in harm to the data subject or anyone else;
- Does not disclose anything subject to a court order or that is privileged or subject to fertilisation or adoption legislation.

A SAR is not...

A SAR is not designed to allow third parties to obtain personal data that the data subject does not, or might not, want disclosed. A SAR is not (and was never intended to be) the mechanism for the provision of medical records for legal purposes, that can be relied upon to be unaltered or unamended, i.e. as a 'chain of evidence'.

Who has control?

The GP surgery is neither a claimant, a defendant, an applicant, a respondent, nor a party (or likely to be a party) to any legal, or intended legal, proceedings. We have fully discharged our obligations under Article 15. The data subject (as a party) has control of the record and can disclose that information as wished, or as ordered by a court.

How can third parties lawfully receive information for legal purposes?

The GDPR has an entirely separate and standalone lawful basis - a clear and established legal route, and the correct legal framework - for processing health (special category) data to support the investigation, preparation and pursuit of legal claims, in the form of Article 9(2)(f). This would be a medical report, not a SAR. A medical report of this nature is a long-established service that GP surgeries provide out with their NHS contract. We would:

- Charge a reasonable fee for such work, as we are entitled to do
- Require a simple form of authority:
 - Providing explicit consent from the data subject; and
 - Defining the relevant medical information sought, which might be the entire record, if appropriate and necessary;
- Aim to provide you with the report within 42 days;
- Retrieve the information;
- Identify any possibly relevant information;
- Exclude information that was not possibly relevant to the claim;
- Check it for accuracy;
- Redact any third-party information, if needed;
- Not be disclosing the entire medical record to you, unless justified;
- Not be providing you with any medical opinions;
- Be providing you only with factual extracts from their medical record;
- Enable the data subject to view the information first, if he/she so wishes;
- Then securely provide you with the prepared records.

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