

Guidelines for disclosure of Section Papers and clinical records with respect to patients detained under the Mental Health Act 1983

Introduction

When patients are detained under the Mental Health Act 1983 there will be occasions when a legal representative acting on their behalf will request copies of (a) the section papers and (b) their clinical records. A request for access to the clinical records may be for (i) a hearing against detention or (ii) for another medico-legal reason.

Background

The process for accessing section papers and clinical records of detained patients in the Trust has been reviewed in order to provide clarity for staff managing these requests. This guideline has been written in conjunction with the Information Governance Manager and the Trust Caldicott Guardian.

Process

(a) **Section papers:** The process will be managed by the MHA offices. Copies of section papers will be released to the requesting solicitors following the receipt of a request which must be accompanied by the patient's written consent. These documents must be sent as soon as reasonably practicable by (a) secure fax, (b) collected in person or (c) sent by post in a double sealed envelope. **Documents must not be sent to solicitors by Email.**

(b) **Records for a hearing:** Access to records in connection with a hearing will be managed through the MHA offices. Authorisation from the Responsible Clinician (RC) will be sought, with RCs given 24 hours to comply using the "Permission of access medical records form" (see copy attached).

Note: A Non-response from the RC after 24hrs will be regarded as approval for disclosure and access will be permitted.

(c) **Records for other purpose including medico-legal :** Requests for access to records which are not in connection with a Mental Health Act hearing will be processed by the Data Protection Office.

Note: If having received the section papers the legal representative queries the validity of the detention and requests copies of the records urgently, these will be prioritised for urgent processing through the Data Protection Office.

Mental Health Act Office

Tel: 020 3228
Fax: 020 3228

To: Dr

From: MHA Office

Date:

c.c. Secretary to Dr.

Access to Health Records for MHA Review Panel/Mental Health Tribunal

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Please complete and return this form to the MHA Office by return. It is the responsibility of the Responsible Clinician (RC) to return the form to the local MHA Office. If the MHA Office has not received the form by *(insert date)*..... it will be assumed that you authorise release and access will be given.

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Name of Patient:

MHA Section:

Ward:

Solicitor & Firm:

The above named Firm of Solicitors have taken instructions / been appointed to represent the above named patient at a forthcoming Tribunal and/or Associate Hospital Managers hearing and have requested access to the clinical records of the patient. The patient has signed a document authorising his/her records to be made available to their legal representative.

As Responsible Clinician (RC) I confirm that:

- (i) the patient has capacity to give such consent
- (ii) all third party information has been placed under the third party tab on ePJS

Signature of RC: _____ Date: _____

- If unable to complete any of the boxes above see overleaf for next step(s) to take

Further notes:

- If it is not possible to tick box (i), please state the reasons for believing the person is incapacitated and state in box below whether, in your opinion, it is in the patient's best interests for the notes to be released

- If it is not possible to tick box (ii) please go through the records and place third party information obtained in confidence under the third party tab on ePJS and password protect the document.

Please note also the Data Protection Office and the Caldicott Guardian * are resources for guidance on particular issues and cases



- **The Data Protection Office is based at the Maudsley on 020 3228 5174. The Data Protection Officer, Andrea Platt, is able to provide immediate help and advice when patients and third parties want access to clinical records.**
- **For difficult cases requiring interpretation of legislation the Data Protection Team are contactable at DataProtectionOffice@slam.nhs.uk**
- **The Caldicott Guardian, Dr Dele Olajide, is contactable at the Maudsley Hospital, Denmark Hill, London, SE5 8AZ. (email: dele.olajide@slam.nhs.uk)**