



MEDICAL NEGLIGENCE OBTAINING AND DISCLOSING YOUR MEDICAL RECORDS

This leaflet is designed as a brief guide to provide practical information. It is not a complete explanation of the law relating to the issues which are dealt with in the leaflet. You should always seek specific legal advice regarding the particular circumstances of your claim.

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1 Your Right to Obtain your Medical Records

You are entitled to have access to and/or receive copies of your own medical records. If you wish to do so, you may make a request for disclosure under the provisions of the Data Protection Act 2018 ("the Act").

There is no obligation for you to explain why you want to access your records, if you do not wish to do so.

You can also instruct your Solicitor to obtain your records on your behalf.

2 What Will you Get?

The Act provides that all records, whenever they came into existence, will be disclosable to the patient. This covers all data, whether it is recorded manually (ie in a handwritten or typed format) or on a computer and would, for example, include an x-ray, an MRI scan, a photograph or a video.

3 What Will it Cost?

In most cases there is no fee to access your own medical records, although if you have made a number of requests within a short period of time, or the provider of the records feels that the request is 'manifestly unfounded or excessive' they may be entitled to charge a fee.

If you want to obtain your records from more than one source, ie the local hospital and your GP, then you will have to make two separate requests for disclosure.

If your Solicitor requests disclosure of your records in connection with the investigation of a claim for damages, they are also entitled to seek disclosure of other documents that may exist, for example, those relating to any complaint which you may have made, adverse incident reports, clinical audit records or serious incident investigation reports.

The Act provides that copies must be disclosed in an intelligible form. Therefore, you are entitled to revert to the holder of the record to ask them to provide better copies or transcripts of unintelligible material. No additional charge can be made for this.

4 Withholding Sensitive Material

If your medical records contain sensitive material which the holder of the records believe might harm you, if that material were to be disclosed to you, then that material may be withheld.

If your Solicitor has requested disclosure of your medical records and such sensitive material is withheld, the holder of the records must tell your Solicitor that such material has been withheld when the copy records are supplied. If your Solicitor wishes to clarify the nature of the sensitive material withheld, in case that material may be relevant to the issues of the case, then your Solicitor will discuss the matter on the telephone.

5 Timescale for Complying with a Request

The Act provides that the holder of the records must provide you with copies of them within 30 days of receipt of your request. If there is a failure to do so, you are entitled to make a complaint to the Information Commissioner.

6 Who will See your Records?

If you request them yourself, then you will be the only person to see them, unless you choose to disclose them to any other people.

If your Solicitor obtains your records in connection with the investigation of a claim for damages, then your records will be disclosed to a number of other people who are involved with your claim. These will include your own medical expert(s) and your Barrister, if one is instructed. It will also be necessary to disclose your medical records to your opponent, their Solicitors, their medical expert(s) and their Barrister, if they instruct one. Your medical records will also be considered by the Judge if your case goes to court.

In a clinical negligence claim, it is very likely that the entirety of your medical records will need to be obtained and disclosed to all the people mentioned above. This will include records relating to your past medical history and may relate to medical issues which would appear to you to be entirely irrelevant to the investigation of your claim.

This can be very difficult for some patients/clients to accept, but it is generally not possible to be selective about the records which are obtained and disclosed.

7 Records Relating to a Deceased Relative

If you want to obtain access to the medical records of a deceased relative, the provisions of the Access to Health Records Act 1990 will apply. This legislation provides that disclosure is only compulsory in relation to medical records which have come into existence since 1 November 1991, although all of the records may be supplied at the discretion of the record holder.

It is likely, however, that if your Solicitor asks for disclosure under the provisions of the Access to Health Records Act 1990, all the records, whenever they may have come into existence, will be supplied.

There is no fee payable for accessing a deceased relative's records and the time period for disclosure of these records is within 30 days following receipt of your request.