Access to Health Request

**From Monday 1 August 2022, GP practices are required to respond to Access to Health Records Act (AHRA) requests for individuals who have passed away however, PCSE will process the Access to Health Records request if:**

* **the deceased patient was unregistered at time of death or**
* **the last registered GP Practice has now closed**

The ethical obligation to respect a patient’s confidentiality extends beyond them passing away. The Access to Health Records Act 1990 (AHRA) provides a small amount of people with the right to access this information:

* a personal representative (the executor or administrator of the deceased person's estate)
* someone who has a claim resulting from the death (this could be a relative or another person)

Please note: Only information directly relevant to a claim will be disclosed.

All applicants will need to provide some [**documents**](https://pcse.england.nhs.uk/media/1093/20-ahr-application-form-aug-edit.docx) to be able to access the records.

**Access to deceased patient’s records**

When a patient is deceased, they are no longer covered by the Data Protection Act 2018.  However, there is still a Common Law Duty of Confidence (CLDC) to protect the deceased patient’s information.  This means that there must be a judgement as to whether you feel the request from a living person, such as a relative or solicitor, is suitable.

There are two ways to decide this is:

**1.              Does the requestor have a claim arising from the estate?**

If the requestor has a claim arising from the estate, then they are entitled to 'health' information relevant to that claim.  For example, this may be information surrounding the patient’s last period of care, or mental health diagnosis.

The information you need to provide is limited to specifically what you feel would be relevant, you can ask questions about what the requester requires.  Often these kinds of requests come from a solicitor, it is appropriate to question or challenge to ensure you are satisfied with the reason given.

The link below “Access to deceased records” will provide you with additional advice:

<https://www.mddus.com/advice-and-support/advice-library/access-to-deceased-record#:~:text=The%20Access%20to%20Health%20Records%20Act%201990%20allows,of%20a%20claim%20arising%20out%20of%20the%20death>.

**2.              Would the patient have been happy to provide access when they were alive?**

This is harder to determine, but if you feel that the patient would have been happy to release the information, such as the requestor is the deceased's next of kin, partner, husband/wife who would have often accompanied the patient to appointments then you can make a judgement decision on this.

However, there is no automatic right, and you may need to weigh up family dynamics.  For example, what has happened to the patient; any living relative could decide to raise litigation on behalf of the patient for breach of common law duty of confidentiality.

For both of the above cases, there is no legal right except for the specific information for someone who has a claim arising from the estate.  Ultimately it is a judgement decision if you feel this information fits into the scope.

Your Practice Caldicott Guardian is the most appropriate to make the decisions, but you should always keep a copy of your decision and reasoning along with any information provided.

***Remember there is no automatic right, however, it is important to review the situation from both sides and weigh up whether to release the information or withhold.***

Some information may be redacted because you feel that the family wouldn't have known ‘about a particular situation’ whilst the patient was alive.  This could be around previous pregnancy, mental health conditions, STIs - the list is not exhaustive.

Further information is available through Primary Care Support England link to Accessing Medical Records: <https://pcse.england.nhs.uk/services/medical-records/accessing-medical-records/>