

Individuals have the right to request access to their health records and medical reports. This guidance has been drafted to assist individuals in exercising their right.

Who can request access?

Individuals should request access via their practitioner, such as their GP or dentist, or the service provider, such as Noble's Hospital. Private patients must send requests to their private practitioner.

If an adult lacks capacity, requests should be made by the person appointed to act on their behalf.

In the case of children, requests may be made by a person with parental responsibility for the child, but the age of the child is an important factor for the practitioner to consider in dealing with the request. In general, where a child is pre-school age or in primary education the request should be made by a person with parental responsibility, whilst children over the age of 16 would normally be expected to make the request on their own behalf and have the information supplied to them and not to a parent.

However, when children are aged between 11 and 16 the practitioner will need to decide whether the child has sufficient understanding and maturity to make the request on their own behalf. Medical practitioners are bound by a duty of confidentiality to their patient (i.e. the child) and if they receive a request from a parent of a child in this age group they will need to consider on a case by case basis whether the information should be disclosed to the parent or not.

In some cases, the child may not want their parent to have access to their medical information and will have advised the practitioner of their decision, for example, girls who may have been prescribed oral contraceptives or those seeking medical advice on gender reassignment. Practitioners should consider contacting the child to ascertain their wishes.

(Note: the reference to "child's consent" in the data protection legislation applies only to the provision of Information Society Services to children - it is not applicable in the context of the right of access.)

Are "health records" and "medical reports" different?

Yes - and there are different routes for requesting access.

"Health Record"

A health record is a record which

- consists of information relating to the physical or mental health of an individual who can be identified from that information, or from that and other information in the possession of the holder of the record; and
- has been made by or on behalf of a health professional in connection with the care of that individual.

"Medical Report"

A medical report means a report relating to the physical or mental health of an individual prepared by a medical practitioner who is or has been responsible for the clinical care of the individual.

Accessing “Health Records”

Deceased individuals

The data protection legislation does not apply to deceased persons and the right of access under Article 15 cannot, therefore, be exercised. Instead, the **Access to Health Records and Reports Act** (AHRRA) allows the “*patient’s personal representative and any person who may have a claim arising out of the patient’s death*” to make an application for access to a health record of a deceased person.

The holder of the deceased person’s health record should be contacted about requesting information. To view AHRRA - <https://www.legislation.gov.im>

Living individuals

Article 15 of the Applied GDPR gives living individuals the right of access to their “personal data” in health records, but exemptions to that right are set out in Schedule 9 to the GDPR and LED Implementing Regulations 2018. Details about how to exercise that right (i.e. make a subject access request) are on the website.

Accessing “Medical Reports”

Where medical reports are prepared by your practitioner for the purposes of insurance (i.e. you have entered into, or are seeking to enter into, a contract of insurance) or employment, the AHRRA gives you the right to access those medical reports, including **before** the report is supplied to the organisation that requested it. **The following relates to medical reports produced in these specific circumstances.**

If the report is to be produced by a medical practitioner who **is or has been** responsible for your clinical care, e.g. your GP,

- You have the right to ask to see the report **before** it is sent to the insurance company or employer
- You also have a right to ask for any part of the report to be amended that you consider to be incorrect, misleading or incomplete – the medical practitioner may accede to some of your request for amendment, but in the case that he does not, then he is required to attach a statement of your views to the report if you request him to do so.

Who should I inform if I want access to a medical report before it is supplied?

- You may advise the organisation at the time you give your consent to the report – the organisation must then inform the medical practitioner of your request.
- You may also notify the medical practitioner that you wish to have access to the report before it is supplied to the organisation.

When will the organisation get a copy of the medical report?

If the medical practitioner has been notified by the organisation or you that you wish to have access to the report before it is sent to the organisation then it will not be supplied to the organisation until

- you have had access to the report, any amendments have been made where appropriate and you have advised the medical practitioner that you consent to the contents being supplied; or
- 21 days have elapsed from the date the request was made by the organisation, or 21 days have passed since you notified the medical practitioner, and you have not made any arrangements for accessing the report.

Can I get a copy of a medical report after it has been sent to the organisation?

If the medical report has been produced by a medical practitioner **who is, or has been, responsible for your clinical care** then the AHRRA requires the medical practitioner to retain a copy of that report for at least 6 months. You are entitled to request access to that report up to 6 months after it was supplied. You may make the request under the AHRRA or the data protection legislation. After the 6 month period has elapsed, the request should be made under the data protection legislation.

If the medical practitioner who produced the medical report **is not, or has not been, responsible for your clinical care** then the AHRRA does not apply to the report and you will need to make a request under the data protection legislation.

Access to medical reports not made by a medical practitioner NOT responsible for clinical care

In some cases, for example, if you have been involved in a road traffic accident and the third party's insurance company sends you for a medical examination, or your employer has requested a medical examination by a medical practitioner other than yours, those undertaking of such examination will not be responsible for your "clinical care". In such cases, the rights provided by the AHRRA Act do not apply.

However, you are entitled to access to your personal data under the data protection legislation by making a request to either the person who supplied the report, or received the report, at any time – see the guidance "Making a subject access request".

Will I always get a full copy of the medical report?

Not always - as with all medical records, the medical practitioner is not obliged to give an individual access to any part of a medical report if, in the opinion of that medical practitioner, the disclosure would be likely to cause serious harm to the physical or mental health of the individual or others, or would indicate the intentions of the practitioner in respect of the individual.

They must however inform you of this decision. Where there are matters which should be drawn to your attention, it is usual for the medical practitioner, if they are not responsible for your clinical care, to forward the information to your GP or other relevant medical practitioner who is responsible for your clinical care, so that they can discuss matters directly with you.

Can I be charged a fee for a copy of the medical report?

A medical practitioner may charge a reasonable fee to cover the cost of supplying a copy of the report if the AHRRA applies. Requests under the data protection legislation are free.

In practical terms, the right of access provided by the data protection legislation can be exercised in respect of any health record or medical report about you.

Utilising the right of access under the data protection legislation does not, however, guarantee that you will see a copy of a 'medical report' prepared by a medical practitioner who is responsible for your clinical care **before** it is supplied to the organisation which has requested it.