



**APRIL COMPLETE CARE SOLUTIONS LTD  
(The “Company”)**

**Access to Records Policy**

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**1. Introduction**

This procedure is for Services where April is responsible for Access to Record requests.

**2. Purpose**

To ensure that individuals and carers are enabled to access their records in compliance with the Data Protection legislation and that staff are consistent in their approach to access of files.

**3. Context**

The statutory framework relevant to this procedure includes:

- GDPR – General Data Protection Regulation (May 2018)
- The GDPR 1998
- The Crime and Disorder Act 1998, Section 15
- The Human Rights Act 1998
- The Freedom of Information Act 2000
- Caldicott Standards 2001
- Research Governance Framework 2004/2005

GDPR applies to all personal information within the relevant definitions of the Act and as further defined by court decisions.

**4. Rights of Access**

4.1 Under the terms of the GDPR, any living person has a right of access to personal information about themselves.

4.2 Social Care settings have an open access policy of encouraging individuals and carers to routinely have free informal access to information held on them.

4.3 When dealing with other agencies or individuals it is important to ask them if he jointly held information can be shared with the individual.

4.4 Formal access to closed and open files will be provided free of any charge.

4.5 Requests for personal information will need to be authenticated before allowing access.

4.6 Individuals can apply for access to their personal information through an agent or representative who will need to be verified. See below for further details.

**5. Requests made by, or on behalf of, a child**

5.1 Where a child or young person under the age of 18 years makes a request for access to their information, the Registered Manager, together with relevant case workers, must decide whether or not he/ she has sufficient understanding to do so. That is does he/ she understand the nature of the request? If so then the request for access should be complied with.

5.2 If a child does not have sufficient understanding to make his/ her own request, a person with parental responsibility (referred to below as the parent) can make the request on the child's behalf. In this case the status of the person making the request will need to be verified.

5.3 Where the Registered Manager and the case worker considers that granting access to a parent is likely to result in serious harm to anyone or is not in the child's best interest, they may refuse access. The reasons for refusal must be recorded in writing and included in the child's file. In this case the parent may then apply to the courts for access.

## **6. Requests on behalf of a person lacking mental capacity**

6.1 If a person over 18 years of age with a mental illness has legal capacity i.e. she/ he understands the nature of the request, she/ he can request access.

6.2 If a person lacks capacity to manage their affairs, someone acting under an order of the Court of Protection or acting within the terms of a registered Enduring Power of Attorney can request access on her/ his behalf. Mental order does not necessarily equate with mental incapacity.

## **7. Requests made through another person (an agent)**

If a person has capacity, and she/ he has appointed an agent, that person can make a valid request for access on behalf of the individual. If it is clear that the person has authorised the agent to make the request, the request must be met as if it had been made by the person. This also applies where a person is acting on another's behalf or under a general power of attorney. Proof of identity will be required before access is given.

## **8. Disclosure to social care staff**

Access to personal information will be made available to the designated employees with responsibility to prepare the files for access or for whom the information is necessary in order to carry out the service and to meet statutory and legal obligations.

## **9. Disclosure to other agencies and organisations**

9.1 Information may only be disclosed to other agencies if there is a valid, signed and up to date information sharing protocol.

9.2 In considering requests for access the best interests of the individual or carer must be borne in mind, especially where access is being given without the direct consent of the individual or carer. If there is any doubt about whether or not to give access to all or part of any record the Registered Manager should be consulted.

## **10. Involving individuals and carers**

- 10.1 Individuals should be made aware of the reasons why any information is needed. They should be encouraged to check information, put their own point of view and propose any alternative plans.
- 10.2 The permission of individuals should be sought to record and disclose information to others for the purpose of making decisions. Consent should be recorded on the file. Any disagreement should be recorded and discussed with the Registered Manager to decide appropriate action.
- 10.3 Individuals and carers should be informed about all forms of information held, including financial files, computerised information, complaints files, service files etc.
- 10.4 Informal access to information should be a normal part of casework. It should be recorded on the persons file when access has been shared.

## **11. Withholding Information**

Certain personal information is exempt from the disclosure requirements of the GDPR. The exceptions are:

- 11.1 *Prevention of Crime etc.* The company need not disclose information to the individual or person requesting the file on behalf of the individual which is held for the purposes of the prevention or detection of crime, or to apprehend or prosecute offenders if disclosure would be likely to prejudice one of these purposes.
- 11.2 *Risk of Serious harm.* The company need not disclose information to the individual or person requesting the file on behalf of the individual if it is believed this would prejudice the carrying out of social work because it would be likely to cause serious harm to the physical or mental health or condition of the individual or another person.
- 11.3 *Information about physical or mental health condition.* The company must not disclose this kind of information to the individual or person requesting the file on behalf of the individual without first consulting an 'appropriate health professional'. This would normally be the person responsible for the individual's current clinical care in connection with matters to which the information relates.
- 11.4 *Other legislation.* Where other legislation prevents disclosure, then the person cannot rely on the GDPR 2018 to seek access to records. These include, for example, adoption records and reports; parental order records and reports. (Adoption Records are accessed through the adoption service; requests should be made directly to them).
- 11.5 *Refusal to access.* If access is refused, this should be notified to the person requesting access as soon as practicable and in writing, even if the decision has also been given in person. The employee should record the reasons for the decision and explain these to the individual.

**12. Individuals and carers rights under the law**

- The GDPR requires information to be recorded in an appropriate form. Copies of the information must be supplied if requested. However the company need not supply a copy if it is not possible, or would involve disproportionate effort, or if the individual agrees otherwise.
- Some of the material may be known to an individual, but may still be helpful to have someone available to help the person 'take in' the material or explain anything that is not understood.
- The individual has the right to amend inaccurate information and to receive a copy of any such additions, amendments, deletions or notes. Where agreement on changes cannot be reached and they remain the same this must be recorded on the record.
- When a request for Access to Records is made this will apply to both manual and electronic files on which information may be stored.

**13 Third Party Information**

13.1 Personal information may include details of another person (a third party). If disclosure would allow the third party to be identified the Registered Manager must confirm the third party's consent before disclosure. If it is reasonable in all circumstances the information could be disclosed.

13.2 To decide what is reasonable, the following factors must be considered:

- Any duty of confidentiality owed to the third party
- Any steps taken to seek their consent
- Whether the third party is capable of giving consent
- Whether consent has been expressly refused
- Any legal prohibition

13.3 If consent is not given by the third party within 40 days the Registered Manager should give as much information as possible without identifying the third party and should give an explanation why some of the information requested has not been given.

**14. Access to records procedure**

- 14.1 Formal requests should be notified to the Registered Manager who will be responsible for responding to any requests/ an acknowledgement letter of request and to ask for any further information required to identify the individual and locate the information should be sent within 5 working days.
- 14.2 The Registered Manager is responsible for
- Locating the relevant information
  - Arranging access to the files
  - Arranging an appropriate person to accompany the individual whilst they are accessing their files
  - Authenticating the identification of individuals before access
  - Gaining third party consent of disclosure.
  - Ensuring that any third party information where consent is not agreed is removed or anonymised before access
  - Replying within 40 days of receipt of the request for access
  - Monitoring the progress of all requests
  - Scanning any 'privileged' information
  - Logging on a cover sheet for the file the type of information removed, the page number and the reason it was removed.
- 14.3 If the personal information requested is not held, the Registered Manager must inform the applicant as soon as possible.
- 14.4 Where an appointment has been made to see records and no response has been received from the applicant (or if the applicant does not keep the appointment) a second appointment will be offered. If this fails a new access request will have to be made.