

Health Privacy it's my business



Health Records Act

Health Privacy Principles

Right of Access

Information Sheet No. 6

Refusal of Access on Ground of Threat to Life or Health of the Individual requesting Access.

Key Message

Individuals refused access to health information about them, on the grounds it would pose a serious threat to the life or health of the individual, have the right to nominate a health service provider (HSP) to provide a second opinion. If access is refused because of a serious threat to the life or health of any other person then access **must not** be given and the right to obtain a second opinion does not apply.

Purpose

This information sheet provides guidance where organisations refuse access to health information on the grounds of serious threat to life or health of the individual requesting access. It outlines procedures for organisations refusing access on these grounds, and HSPs nominated to give a second opinion on the refusal.

Offer to discuss the health information

If an organisation is a suitably qualified HSP it may offer to discuss the health information with the individual. If not, the organisation may arrange for a qualified HSP (who has consented to do so) to discuss the health information with the individual. The organisation must advise the individual of their right to nominate a HSP to discuss the information with them, whether or not the organisation has offered to discuss the information.

Nomination of a HSP

The individual may give written notice to the organisation nominating a HSP of their choice. A HSP must give their consent before being nominated. The time period for giving written notice is 21 days after:

- receiving the notice of refusal where no offer to discuss is made; or
- the offer to discuss is not accepted; or
- a discussion with the organisation or HSP is held under such an offer.

Objection to the nomination

If the organisation believes on reasonable grounds that the nominated HSP is not suitable they can object to the nomination.

The organisation must give the individual written notice of objection within 14 days.

Where appropriate the organisation may suggest the class of HSP from which the nomination should occur. An organisation cannot object:

- where the HSP who recorded the information and the nominated HSP are registered with the same registration board;

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- if the nominated HSP is a registered medical practitioner with ability to understand and interpret the health information; or
- if the nominated HSP provides the same kind of service as the HSP who recorded the health information and has the ability to interpret and understand the health information.

The nomination can lapse if the organisation gives notice of objection to the individual within 14 days or the nominated HSP:

- dies; or
- ceases to be a HSP; or
- refuses or fails to act within a reasonable time.

If the nomination lapses, the individual may make one more nomination in its place.

Nominee to receive information

Once the individual accepts the HSP nominated by the organisation, or the individual nominates their own HSP, the organisation must give the health information, or a copy of it, to the nominated HSP within 14 days unless:

- the individual withdraws consent to discuss with a HSP nominated by the organisation; or
- the organisation believes the HSP is not suitable to act as the nominated HSP; or
- the nomination lapses.

Functions of the nominated HSP

The nominated HSP should:

- notify the individual they will discuss with the organisation the basis for refusing access;
- contact the organisation to discuss the nature of its concerns;
- form an opinion on the validity or otherwise of the decision to refuse access on the ground of serious threat to life or health of the individual requesting access;
- explain grounds for the refusal to the individual, if appropriate;
- discuss content of the health information with the individual, if appropriate;

- allow the individual to inspect the information if the provider is satisfied it does not constitute a serious threat to the life or health of the individual;
- decline to allow the individual access to the health information if they believe there is a serious threat to the life or health of the individual.

If the individual wishes to have a copy of the health information it must be with agreement of the organisation holding the health information.

The nominated HSP is able to charge a fee (maximum set by the Health Records Act Regulations 2002, available from the HSC website or office, see details below) for carrying out these functions.

They must not disclose to the individual any health information to which access has been refused on any other grounds.

The act of forming an opinion by the nominated HSP about the validity of the decision to refuse access is not an interference with the privacy of the individual to whom it relates.

About information sheets

Information sheets are advisory only and do not constitute legal advice nor are they law.

They are intended to help organisations apply the HPPs in everyday or practical circumstances. Organisations may need to seek separate legal advice on the application of the *Health Records Act* to a particular situation.

Nothing in an information sheet limits the Health Services Commissioner's powers to investigate complaints under the Act or to apply the HPPs in the way that seems most appropriate to the facts of any case being dealt with.

January 2003

MORE INFORMATION:

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