

14 September 2011

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Our Ref: 635316R

Dear Ms Kirby

Thank you for your email of 5 September 2011 (our ref: 635316R) in which you request a review of our response to your original FOI request of 30 July 2011 (our ref: 635316).

In your original FOI request dated 30 July 2011 (our ref: 635316), you asked the following:

“You state that anyone who has a claim should be able to get medical records of their own father.

I have asked on many occasions for a copy of my father's medical records, but Doncaster Royal Infirmary have refused to give me or the other 3 children of my father, the copies.

How does a family who had worked together to build up a family business, gain access to their own father's medical records? “

We replied to you on 17 August 2011 to explain that the Department had published guidance about accessing health records on its website and provided the web address. We explained the responsibilities of the record holder and your right to make a complaint about them using the NHS complaints procedure should you be unhappy with the way in which they handled your request for copies of health records.

You then submitted an internal review request dated 5 September 2011 (our ref: 635316R) in which you said:

“ So what you are stating here is that if the NHS have made mistakes, they can, totally ignore the blood family and refuse all medical records. Is this correct?

What is the use of Access to records if they can refuse anyone who is trying to find out exactly what has happened and why?

This means that if a family do not have the financial way with all, they will never get the records that should be there's by right.

My father was give terminal drugs for a condition the pathology report proves he did not have and the consultant has stated he reported the endoscopy results and so the GP should have known, yet he kept on as though dad was dying,

He had been given a 5 day course of Fludarabine just 13 days before terminal drugs were prescribed, 7 days after they finished, by a newly set up on call doctors service.

I have two claims one financial ie named in the so called will produced, supposedly made just 6 weeks before dad died on a day he requested a meeting with me, whilst able to get about on his own and still drive,

I have also a claim that my father had his life ended by lies and drugs.

The family need those medical records.”

### **Internal Review**

Your original request asked how you could obtain access to your father's medical records. You also explained that your requests to the Doncaster Royal Infirmary (DRI) for these records had so far been refused.

I consider that our reply addressed both of these concerns. You were informed of your right to request a deceased patient's medical records under the Access to Health Records Act 1990; you were provided with details of the Department's "Guidance for access to health records requests" and were given information about how to make a complaint against the decision of the DRI.

In response to your further IR request, it may help if I explain some of the provisions in the Access to Health Records Act by reference to selected sections of DH guidance. I have provided the web address again for your convenience:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_112916](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_112916)

Firstly, you may or may not have a statutory right of access to your father's records. Further details of those with a statutory right of access is explained in paragraphs 37 – 40 of our DH Guidance.

If you do not have a statutory right of access your request still has to be considered by the record holder. Paragraphs 43 – 48 of our guidance covers the considerations that apply.

You state that you have requested health records from the DRI on many occasions. It might be useful for you to see details of how to apply for these records under the Act – covered in paragraphs 41 – 48 of our guidance.

If you wish to complain about the decisions of the DRI you may find the section covering Complaints of interest. Please see paragraph 63, which advises that any complaint should be resolved locally with the relevant health professional. If this fails to resolve the issue then a complaint should be submitted through the NHS complaints system.

You were previously supplied with a link to the NHS complaints pages on the NHS Choices website.

As part of the NHS Complaints system every NHS organisation is required to have a complaints procedure. Details of the DRI's complaints procedure can be found on their website at the following address:

[http://www.dbh.nhs.uk/about\\_us/board\\_of\\_directors/whos\\_who/nursing\\_and\\_midwifery/patient\\_advice\\_liaison\\_service.aspx](http://www.dbh.nhs.uk/about_us/board_of_directors/whos_who/nursing_and_midwifery/patient_advice_liaison_service.aspx)

Should your complaint fail to be resolved by the DRI you can then refer your complaint to the Parliamentary and Health Service Ombudsman (PHSO). Details can be found on their website at the following address:

<http://www.ombudsman.org.uk/make-a-complaint/how-to-complain>

In addition, you asked that if the NHS has made a mistake can it then ignore requests for medical records from the blood family?

The answer is no. The holders of health records have a responsibility to comply with the Access to Health Records Act . All requests for health records must be considered, in accordance with the provisions of the Act.

You may be interested to know about the "duty of candour" principle within the NHS. Although this principle is enshrined in a number of NHS regulatory frameworks (such as the NHS Constitution), the Government's recent response to the NHS Future Forum report contained the following statement concerning this duty:

"We heard through the listening exercise the suggestion that we could strengthen transparency of organisations and increase patient confidence by introducing a 'duty of candour': a new contractual requirement on providers to be open and transparent in admitting mistakes.

"We agree. This will be enacted through contractual mechanisms and therefore does not require amendments to the bill. We will set out more details about this shortly."

The full response document can be found on our website at the following address:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_127444](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_127444)

The internal review which you requested is now complete. We hope that you are content with this response and the additional information provided.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

Yours sincerely

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