

# **Service Six**

## **Data Protection**



**Date:** April 2017

**Review Date:** April 2018

**Policy Title:** Data Protection

### **What this policy covers**

This policy details your rights and obligations in relation to your personal data and the personal data of third parties that you may come into contact with during the course of your employment.

If you have access to the personal data of employees or of third parties, you must comply with this Policy. Failure to comply with the Policy and procedures may result in disciplinary action up to and including dismissal without notice.

### **Policy**

Service Six abides by the confidentiality provisions in the British Association for Counselling and Psychotherapy's (BACP) Ethical Framework for Good Practice in Counselling and Psychotherapy. Its operations are also governed by the Data Protection Act (1998); Access to Health Records Act (1990) and Freedom of Information Act (2000). This policy complies with NHS Codes of Practice and the business management standard ISO 9001:2008.

All employees and affiliate practitioners, with access to any personal information, whether paper based or electronic, must adhere to this policy and related procedures.

Service Six will endeavour to ensure that all people involved in the delivery of its services are aware and informed of their responsibilities to treat personal and sensitive information appropriately.

### **DEFINITIONS**

#### **Health Record**

Within the Freedom of Information Act a health record is defined as consisting of information relating to the physical or mental health or condition of an identifiable individual, made by or on behalf of a practitioner in connection with the care of that individual.

The Act includes health records held for NHS, independent sector and practitioners' private practice records. It also applies to employers who hold information relating to the physical or mental health of their employees if the record has been made by or on behalf of a practitioner in connection with the care of the employee.

A health record can be in digital or manual format. It may include hand written clinical notes, letters to and from practitioners, outcome measures and all records of telephone contacts.

## **ROLES & RESPONSIBILITIES**

### **Chief Executive**

Service Six's Chief Executive has overall responsibility for policies and procedures relating to clinical information and for:

- reviewing and updating this policy;
- the development of best practice guidelines;
- Audits to ensure adherence and compliance with statutory duties.

### **Managers**

In practice, responsibility for decisions relating to disclosure and release of information is devolved to service managers (who exercise responsibility similar to Caldicott Guardians). In addition, service managers are responsible for:

- ensuring the provision of training for staff relating to managing information; ensuring that staff are aware of and adhere to relevant policy and procedures;
- monitoring the effectiveness of this policy and raising issues requiring further attention; consulting with the clinical governance manager or other management staff/Chief Executive as necessary to support compliance.

Service managers may deputise their role to a suitably trained and qualified member of staff, who will exercise due caution in making decisions, consulting with the Operations Manager, Lead Therapist or other Manager as appropriate.

### **Practitioners**

All employed personnel and practitioners are expected to consult with their line managers in matters relating to disclosure or release of client information.

Only when circumstances require an urgent response (i.e. to prevent immediate significant harm to the client or others) and the Operations Manager or any other member of the Designated Safeguarding team is not available, should the practitioner make the final decision to disclose information. In any event this should be in keeping with Service Six's policy in managing client risk.

In all cases of disclosure and release of client information, practitioners should make and retain careful notes about; when; what; and why decisions were taken.

## **DISCLOSURE AND SHARING OF CLIENT INFORMATION**

Where it is appropriate to share information about a client with other organisations, local protocols are in place to ensure as far as is reasonable that those receiving the information use it appropriately and respect confidentiality. These protocols differ according to the nature of the

commissioning organisation (e.g. PCT, NHS or private) and care must be taken to follow the appropriate procedure for example in respect to release of information to a client's GP.

If it is necessary to share confidential information with others for the effective care of the client or where another person may be at risk of significant harm, this needs to be managed sensitively with the client. An explanation as to the reasons for the disclosure should be provided by the practitioner and the likely consequences should be given to the client. Where possible a client's written consent to release information is obtained.

Apart from exceptional circumstances involving risk of significant harm, the wishes of the client are taken into account as to information they do not want disclosed.

When information is disclosed, only as much as is required for the purpose is released.

The decision to release information regarding a client, where it is believed to be in the "public best interest" is a matter for careful consideration with the service manager and other senior clinical staff as appropriate.

## **ACCESS TO HEALTH RECORDS**

### **Who can access health records?**

A client is entitled to apply for access to their total record as it stands at the time the record is made and they are not required to give a reason for their application. In addition the following can request a client's record:

- any person explicitly authorised by the client.
- parents or guardians with 'parental responsibility' in the case of a child (which may include estranged parents).
- anyone who has 'Lasting Power of Attorney', 'Court appointed Deputy' or is acting as an 'Independent Mental Capacity Advocate'.
- a request from a solicitor acting on behalf of a client is handled in the same way as a request from the client.
- In some cases, children under the age of 16 years who have the capacity and understanding to take decisions about their own treatment are also entitled to decide whether personal information may be passed on about something they do not wish their parents to know (i.e. a child who is 'Gillick Competent').
- At no time should a client's record be released to a solicitor or insurer without the knowledge of the service manager, as Service Six may be required to defend any litigation which may ensue. The service manager will seek further advice from their line manager in cases where a claim may arise.

### **Health records of a deceased client**

The Access to Health Records Act 1990 applies in this case, which allows the following rights of access to the records of a deceased client:

- a person appointed by the courts to manage the client's affairs following their death any person who may have a claim arising out the client's death (e.g. next of kin).
- where a party intending to make a claim on the estate of the deceased makes an application for access, that access should be limited to the relevant parts of the record only.

In keeping with Service Six's agreement with commissioning organisations, it may be necessary for information to be released as part of investigations into a serious untoward incident in such cases agreed protocols will be followed.

### **Procedure for access to records**

- Requests for access should be made in writing to the appropriate manager, who will confirm that the application being made is legitimate and the correct procedure to verify the right of access has been followed.
- The manager will ensure the procedure has been complied with and the required information and payment have been received (where applicable).
- The application will be dealt with promptly and fairly within the forty day period stipulated by law.
- Where in exceptional circumstances (notes have been destroyed after the retention period has elapsed) the request cannot be complied with the client is notified.
- Practitioners who have contributed to the record are notified that an application for access has been made and informing them of the intention to release the record.
- Copies of records should be provided, retaining the originals in the event of a further need for care.
- Consideration should be given as to whether a summary report confirming attendance in sessions would best serve the interests of the client. This should be considered with the service manager.
- If a request is made by a client to see what is written about them in person, this should be managed by the same procedures as above, with the addition of a mutually agreed convenient time to view the records. The client may also have questions about the content of the record which the practitioner and the manager will need to consider together.

### **Withholding access to records**

Access to the health record can usually only be denied or limited where the information might cause serious harm to the physical or mental health of the client or any other person. Or, where in giving access this would disclose information relating to or provided by a third party who has not consented to the disclosure.

There is no legal requirement to advise an applicant of information which has been withheld, although in upholding transparency this needs to be carefully considered.

### **Charging for access to records**

Under the Data Protection Act 1998, the maximum fee that can be charged for providing copies of records is:

- £10 for computer records
- £50 for manual records or a mixture of both.
- £10 for clients wishing to view their records unless an entry has been made within the last forty days

In practice, it may be more appropriate to offer to provide a report of the client's overall treatment. In this case, consideration is given to the length of the report and the practitioner's time in producing this and charges are made accordingly.

In some cases it is not possible to charge for release of client information when we are expected to comply with a statutory obligation (e.g.in providing information to Social Services for Child Protection purposes or to the police).

#### **Rights to amend contents of a health record**

- Where the client disagrees with a non-medical fact in the health record, the service manager can alter this.
- Where the client disagrees with a medical or other professional entry, which the professional believes to be correct, this cannot be altered under any circumstances. In this case a note is added to the record to indicate the client's objection.
- In some circumstances the client may request a note be added to the health record indicating they do not wish access to be granted after their death. Where an application is made after the death of the person to whom the record refers, care should be taken to comply with the client's instruction.
- Where possible, amendments to records should include notes of what has been amended which are signed by the client concerned and the service manager.

#### **RELEASE OF INFORMATION HANDLING PROCESS**

A member of staff receives a request for client records in writing, dates it then informs their manager as soon as possible.

The limit to comply with any request is 40 days from receipt (as per Data Protection Act, 1998) but we should aim to comply within 21 days as a matter of good practice.

The manager ensures the following;

- The request is noted on the database client file and all subsequent actions are to be noted. The identification of the applicant is established.
- The request for the release of information is received directly from the applicant, or a third party on their behalf (e.g. solicitor, police) and is signed by the client.
- The relevant information or file is located and contents checked for accuracy and clarity.

- An assessment of what is required to comply with the request is made to establish whether:
  - confirmation of attendance and sessions would be adequate.
  - the whole record is to be supplied (ensuring any references to third parties is removed).
  - a specific clinical report needs to be written (in which case the fee for an hour of practitioner's time may be chargeable).
- Where applicable, the relevant fees have been paid (not applicable for police or statutory authorities). Charges are in keeping with the Data Protection Act (1998):
  - £10 for a straightforward copy of computer based records.
  - £10 for a client wishing to view their record in person (no charge if an entry has been made within the past 40 days)..
  - £35 for manual records or a mixture of both manual and computer records.
- Inform the applicant of any problem in complying with the request, or if additional information is required. Any further actions should be communicated in writing, including requests for additional information.
- Consult with the practitioner concerned regarding information which is to be to be released.
- In the case of any unusual request from a third party, there should be consultation with another manager before information is released.
- Communications should be 'clean' of any information relating to Service Six processes.
- information storage or handling.
- The information may be sent by registered post if it contains particularly sensitive information in which the client may be identified.
- If the information cannot be released consultation with the clinical governance manager will take place, for example when information:
  - may cause serious harm to the client or another person.
  - is not solely part of the client's record (e.g. mediation).
  - requires consent from others (e.g. couples).
  - has been requested previously within an unreasonably short period.

If there are any complications, the manager should consult with the Executive team and detailed notes should be recorded of actions taken with reasons for decisions. Complex cases involving Social Services, the Police or other third party requests without client consent should always be referred for consultation