

South West Yorkshire Mental Health NHS Trust

Bradford District Care Trust

Leeds Partnerships NHS Foundation Trust

These guidelines outline the basis on which information from historical records of the NHS Mental Health Trusts in West Yorkshire (and their predecessor health care organisations) will be made available for research. It sets out:

- What historical NHS records are available
- What restrictions on general access apply
- How you can access this information
- How you can obtain copies of this information
- What you can do if you are unhappy with an access decision.

The guidelines should be read in conjunction with West Yorkshire Archive Service's Access to Records Policy.

What historical NHS records are available?

Both clinical and administrative records from hospitals and other NHS organisations in West Yorkshire are held for historical research purposes by West Yorkshire Archive Service. Whilst the majority of the records created by the NHS are eventually disposed of, some records are selected for permanent preservation as the 'memory' of the NHS, under the Public Records Act, 1958.

Further information about the health records held by the Archive Service is available in Collections Guide 7 – Health Records and via the Service's online catalogue, available at <http://dserve.wyjs.org.uk/>

Are there any restrictions on access to historical NHS records?

Access to historical NHS records is provided in accordance with the Freedom of Information Act, 2000 (hereafter 'FOIA') and Data Protection Act, 1988 (hereafter 'DPA').

West Yorkshire Archive Service will make all NHS records (or the information they contain) routinely available for public consultation and research unless:

- It is necessary to apply a statutory exemption
- Access is likely to cause physical damage to an item
- Access can be provided via a surrogate copy (with the aim of preserving the original)

Information Available for General Access

The following categories of information are available for general public access:

- All information contained within records that would have been 'open' under the former 'hundred year rule', calculated from the last date in the register or file.
- Information contained within records under 100 years old except where a valid FOIA exemption can be applied.

Due to the sensitive nature of medical records it is likely that valid FOIA exemptions will apply. Access requests received are considered on a case-by-case basis.

Information Unavailable for General Access

Some recent NHS records, particularly those containing information of a sensitive, personal nature, are subject to legal restrictions on general access known as 'exemptions':

Exemptions

FOIA exemptions which may commonly be applied to historical NHS records include:

- Section 38 – likely to endanger the physical or mental health, or safety, of any individual. This exemption is also subject to a public interest test.
- Section 40 – contains personal data as defined by the DPA, where the person(s) concerned are still alive.
- Section 41 – information provided in confidence.
- Section 44 – access is prohibited by legislation, or would constitute contempt of court.

This is not an exhaustive list – other exemptions may also apply. More information on FOIA exemptions is available from the web site of the Information Commissioner at <http://www.ico.gov.uk/>

How do I apply for access to historical NHS mental health records?

All enquiries for access to historical NHS mental health records should be directed to:

West Yorkshire Archive Service, Wakefield
Registry of Deeds
Newstead Road
Wakefield
WF1 2DE

Telephone: 01924 305980
Fax: 01924 305983
e-mail: wakefield@wyjs.org.uk

It is important that the access request which you make is as clear and specific as possible, particularly regarding names, dates and places. For example:

'Case history of Albert Mitchell who was admitted to Stanley Royd hospital in July 1870 and died in January 1872'.

Access Outside FOIA

- If you are requesting personal information about a relative who has died within the last 100 years, you may be asked to provide proof of this relationship in the form of death and birth certificates, and letters of permission from the personal representative of the deceased.
- If you are applying for information about yourself, or are acting on behalf of a living individual, please complete a West Yorkshire Archive Service Subject Access Request Form.
- Enquiries requesting access to exempt information for historical, medical, social work or other research projects will be considered under FOIA, s33 of DPA and NHS research ethics criteria. In the first instance, please complete a West Yorkshire Archive Service Research Request Form and provide a supporting letter or other documentation from your tutor or sponsoring body. Access decisions with regard to research projects are made in consultation with the West Yorkshire Mental Health Research and Development Consortium. You will receive an initial response within 30 working days as permitted by the Freedom of Information (Time for Compliance with

Request) Regulations, 2004 (S.I. 2004/3364) notifying you as to whether your project requires further scrutiny and review under NHS research ethics criteria, together with details of the NHS approvals procedure. You are advised to plan research projects well in advance to allow sufficient time for the research approval procedures to take place.

What happens next?

Information Available for General Access

Where the enquiry relates to information available for general access, you will usually be invited to view records in the searchroom at WYAS, Wakefield, provided that to do so would not cause damage to the original documents. If an item is at risk of damage, access may be given through the provision of information or copies.

West Yorkshire Archive Service also offers a Research Service for people unable to visit the Service's offices. Information about the Research Service, for which a fee is payable in advance, can be found on the West Yorkshire Archive Service web site at <http://www.archives.wyjs.org.uk/> (then click on the 'Research Service' link on the left). Please return your completed Research Application Form to WYAS, Wakefield at the address provided on the form.

Information Unavailable for General Access

Where the enquiry relates to information to which an exemption to general access might be applied, West Yorkshire Archive Service will provide an initial acknowledgement, followed by a formal response.

Individuals applying for information about themselves will be provided with a response within 40 calendar days. This allows time for assessment of the request under the terms of DPA, including consultation with the relevant NHS Trust as to whether access to the information is likely to cause harm to any living individual (in compliance with the Data Protection (Subject Access Modification) (Health) Order, 2000 (S.I. 2000/413)).

For all other requests, a formal response will be issued within 30 working days as permitted by the Freedom of Information (Time for Compliance with Request) Regulations, 2004 (S.I. 2004/3364). This allows time for assessment of the request under the terms of FOIA, including consultation with the relevant NHS Trust, and the application of a public interest test where relevant.

Where access is permitted, West Yorkshire Archive Service needs to ensure that enquirers only have access to information to which no valid exemption applies. This may mean that it is not possible to grant access to the original physical record but that access to the information may be given by transcribing the relevant sections, or by providing a photocopy with exempt information blanked out.

Where access to information is to be refused, West Yorkshire Archive Service will issue a formal refusal notice citing the relevant FOIA sections under which an exemption is claimed.

Can I have copies of the information?

West Yorkshire Archive Service will provide one copy of any historical NHS record in line with its normal practice and charges. This means that copying is not carried out if in the opinion of staff the records in question are too fragile to withstand copying. Exempt information may be blanked out from the copies provided. You will be asked to sign a copyright declaration agreeing that copies are supplied for private research only, and may not be published or further copied without consent from West Yorkshire Archive Service in consultation with the relevant Trust.

What can I do if I am unhappy about an access decision?

Complaints about access to historical mental health information held by West Yorkshire Archive Service will be dealt with in the first instance according to West Yorkshire Joint Services' complaints procedure. The leaflet 'How to Make A Complaint About Us' is available at all West Yorkshire Archive Service offices. Alternatively, you may use the form provided at <http://www.wyjs.org.uk/newsite/wyjscont.htm>

If you wish to complain about an access decision arising from a public interest test applied by an NHS Trust, you should complain to the Complaints Department of the relevant Trust. If a public interest test has been applied in relation to your enquiry, you will be informed of this in the formal response together with contact details for the relevant NHS Trust.

If you still remain dissatisfied you may complain to the Information Commissioner:

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

You may find it useful to read the information on 'How to Complain' on the Information Commissioner's web site prior to submitting your complaint – <http://www.ico.gov.uk/complaints.aspx>