

POLICY AND PROCEDURES FOR RESPONDING TO REQUESTS FOR ACCESS TO RECORDS

1. REQUESTS FROM CLIENTS

Under the Data Protection Act 1998 clients have the right to see all records and notes kept on them by Wellspring and by their therapist. These include both computerised notes and personal data and manual notes and records held in relevant filing systems, ie held in such a way that information relating to individuals is readily accessible.

- a) Clients are recommended to discuss in advance with their therapist the wish to access their records, as motivation for doing so may be of clinical importance.
- b) A leaflet entitled "Access to Records" is available for clients, along with the "Procedure for Subject Access Requests".
- c) If a client wishes to proceed with a subject access request their therapist or the Administrator should give them the above leaflets. The client may then make a written request to the Co-ordinator of Clinical Services described in point 2 of the "Procedure for Subject Access Requests".
- d) On receiving the request, the Co-ordinator of Clinical Services must:
 - Ensure the safekeeping and speedy return of documentary evidence of the applicant's identity
 - Ensure that this evidence is adequate
 - Be clear about the specific details of the information required, and where and by whom it is believed to be held
 - Notify the client's therapist, when appropriate, that access to the therapist's personal notes has been requested
 - Ensure that the therapist is aware that it is his or her responsibility, in the case of their personal files, to
 - i) review the record to ensure that the rights of any third parties are not compromised by client access

- ii) ensure that for the client to see information in the files is not likely to be traumatising or to cause "serious harm" to the client's physical or mental health
- Review Wellspring's records in the same way (ie according to points i) and ii) above)

Where there is uncertainty regarding points i) and/or ii) above, the therapist should consult with the Co-ordinator of Clinical Services and possibly with their supervisor and legal adviser. The Co-ordinator of Clinical Services should consult appropriate colleagues and take legal advice where necessary. BACP and COSCA may also be consulted.

In situations where it is impractical to obtain a third party's consent to disclosure, for instance because of passage of time or the impossibility of contacting a third party, it may be possible to anonymise third party references. If not, judgement regarding disclosure should be based on consideration of the likely wishes of, or impact on, the third party and on the anticipated effect of disclosure on the client. The decision as to whether or not to disclose in this situation should always be based on discussion with appropriate professionals and should never be made autonomously.

e) Response to a client's subject access request should be made as quickly as possible and certainly within 40 days. The client must receive an explanation if any information cannot be provided within that time.

f) When the requested record is complete, the Co-ordinator of Clinical Services should arrange a time for the client to view it.

g) Clients should not simply be given copies of their file without going through the following procedure:

- A room should be set aside for viewing the file and a member of the Wellspring clinical team, wherever possible the client's therapist, should be present (if the therapist's notes are among those requested it is essential for that therapist to be present)
 - i) to discuss with the client the contents of the file if need be and to answer any questions the client may have
 - ii) to ensure that the file is not removed from the room in which access is provided and to ensure that it is not altered
- The client may request alterations to correct any factual inaccuracies
- If the client requests photocopying of any notes or records this may be agreed, but will incur a charge

h) Wellspring aims wherever possible to waive the £10 administration fee permitted by the Data Protection Act.

2. REQUESTS FROM POLICE

Police sometimes request access to records, in connection with investigations such as child abuse allegations. The police have *no* privileged access to therapeutic records without a warrant.

3. REQUESTS FROM SOLICITORS

a) for therapeutic records:

Where a solicitor makes a request for access to therapeutic records, supported or not by a signed letter of consent by the client, this will be refused, however authoritative, insistent or intimidating the request.

Wellspring will not to release records or notes without a subpoena, even *with* the client's consent. This policy aims to protect against situations where the client is not providing fully informed consent to the process and is not fully aware of the extent of the records or of the wide range of individuals who would gain access to this sensitive material in the course of the proceedings. Once disclosed, records are fully available to both parties in the case. This policy may also protect Wellspring from being drawn unwittingly into legal proceedings.

b) for a written report:

A solicitor or the client may request a report from the therapist for use in court proceedings.

Therapists preparing such a report might wish to seek professional advice regarding its construction and should in any event bear in mind the following:

- Disclosure should be restricted to information relevant to the case in hand. It may, for example, be sufficient to give only the dates of attendance at sessions
- It is essential to distinguish between describing observed *fact* and offering professional *opinion* to the court
- The production of a court report enables opposing legal representatives to request access to the original therapeutic records. Preparation of a court report may involve the therapist in progressively greater levels of disclosure of client records, far beyond the original intention

4. ACCESS BY THE COURTS

While therapists are bound by confidentiality under professional codes of ethics, they cannot prevent court access to their notes and records simply on the grounds that they are "confidential".

Where courts require the fullest access to evidential information required for resolving a case, it is deemed to be in the public interest that "confidentiality" is overruled.

It is therefore of utmost importance that:

i) Therapists remain acutely aware, when making notes, that if there is litigation, these may be seen in full by legal representatives on both sides of the case

ii) Therapists and Wellspring contact their professional indemnity insurers and legal advisers for advice

It is possible for Wellspring or the therapist to apply to the judge for the records to be read privately and a decision made as to whether they should be released. However, this may involve significant legal expense for Wellspring or for the therapist, whose professional indemnity insurance may not cover the cost of legal representation where the therapist, as in this instance, is technically a witness and not a party to the case.

Recommended reading

Peter Jenkins (2003). "Disclosure of case notes" in *BACP's Counselling & Psychotherapy Journal* (June), pp. 18-21.

Peter Jenkins (2003). "Therapeutic responses to requests for disclosure of therapeutic records: an introductory study" in *Counselling & Psychotherapy Research* vol. 3 no.3, pp. 232-238.