

**WRITTEN QUESTION TO THE MINISTER FOR HEALTH AND SOCIAL SERVICES  
BY DEPUTY M.R. HIGGINS OF ST. HELIER  
ANSWER TO BE TABLED ON TUESDAY 19th FEBRUARY 2013**

**Question**

Further to the response given on 20th November 2012, will the Minister set out in detail the legal rights of parents to any records held by all branches and sections of the Health and Social Services Department relating to their children up to the age when they reached majority and explain the procedures to be followed citing the relevant laws?

**Answer**

It is important to note that young people are encouraged as far as possible to allow their parents/carers to be informed and involved in their care and treatment. As such the number of formal requests received by parents for information about their children is minimal.

The fundamental right of access any individual has to their own data/records is governed by the Data Protection Law (Jersey) 2005. This law equally safeguards an individual's data, ensuring it is only disclosed to appropriate people and for appropriate purposes.

Under the data protection law, an individual may request a copy of their own data, subject to a number of exemptions. Even if a child is too young to understand the implications of subject access rights, data about them is still their personal data and does not belong, for example, to a parent or guardian.

It is the child who has a right of access to the information held about them, however in the case of young children the right to access is likely to be exercised by those with parental responsibility for them. Therefore parents can make subject access requests on behalf of their children who are too young to make their own request.

However, as discussed in detail in the answer to the question raised on 20<sup>th</sup> November 2012, the situation around older children is complex, as issues around capacity are also introduced. (\*see attached hyperlink for further information regarding capacity and "Gillick Competence")

A young person of 12 years or over is generally considered mature enough to understand what a subject access request is. They generally are considered to have the capacity to make their own request and would need to provide their consent to allow their parents to make the request for them.

It is the department's responsibility to follow Caldicott Principles (\*\* see attached hyperlink) and use their judgement to decide whether a young person has the capacity to make the decision to request their own information, and if applicable the capacity to consent to its disclosure to their parents.

This is not necessarily an easy decision. The UK Information Commissioner office provides advice on this matter.

*'Before responding to a subject access request for information held about a child either by a child, or by a parent, you should consider whether the child is mature enough to understand their rights. What matters is that the child is able to understand (in broad terms) what it means to make a subject access request and how to interpret the information they receive as a result of doing so.*

*When considering borderline cases, you should take into account, among other things:*

*the child's level of maturity and their ability to make decisions like this;*

*the nature of the personal data;*

*any court orders relating to parental access or responsibility that may apply;*

*any duty of confidence owed to the child or young person;*

*any consequences of allowing those with parental responsibility access to the child's or young person's information. This is particularly important if there have been allegations of abuse or ill treatment;*

*any detriment to the child or young person if individuals with parental responsibility cannot access this information; and*

*any views the child or young person has on whether their parents should have access to information about them. '*

Capacity is a decision specific concept. It does not follow that, just because a child has capacity to make a subject access request, they also have capacity to consent to sharing their personal data with others – as they may still not fully understand the implications of doing so. Therefore if a request is received from a parent, for a young child, this will also need to be considered.

It should be noted that there are few subject access requests received by Health and Social Services every year, which would fall into the latter category requiring such consideration. I would reiterate that this is no doubt partly because young people are encouraged as far as possible to allow their parents/carers to be informed and involved in their care and treatment.

Additionally there are varying rights parents would have to information about their children, if court or care proceedings are being contemplated or are in progress. These are not common situations, and the answer to the question would in part depend on the circumstances of the case. Such cases would require input from the law officers department.

For further information:

\*\*Caldicott Principles:

[http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Managingyourorganisation/Informationpolicy/PatientConfidentialityAndCaldicottGuardians/DH\\_4100563](http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Managingyourorganisation/Informationpolicy/PatientConfidentialityAndCaldicottGuardians/DH_4100563)

\*Gillick Competence:

[http://www.nspcc.org.uk/inform/research/questions/gillick\\_wda61289.html](http://www.nspcc.org.uk/inform/research/questions/gillick_wda61289.html)