

# PRIVACY AT BLACKBURN CLINIC

Photocopies of the Blackburn Clinic Privacy Policy are available upon request.

## ACCESS

Patients have a general right of access to all health information held about them.

The following is a list of the health information to which individuals have a right to access, even if this information was collected before the commencement of the *Health Records Act 2001 (Vic)* :

- The history of the health of the individual, an illness or a disability;
- Any results of examinations or investigations;
- Management plans;
- Services provided;
- Personal information collected in connection with the donation of body parts, organs or substances; and
- Genetic information which could be predictive of health.

Blackburn Clinic is required to provide the individual with access in the format requested by the individual (except information collected before 21/ 12/ 2001 -see below).

### Mandatory refusal of access

Some exceptions exist, for example where:

- It would pose a serious threat to anyone's life or health;
- It would have an unreasonable impact on someone else's privacy;
- It would be unlawful to provide access, or denial is authorised by law;
- It might prejudice an investigation of possible unlawful activity;
- Denying access is required and authorized by or under law.

If access is refused on the grounds of serious threat to the patients' life or health, they can ask for a second opinion – this process is described in the Complaint Handling Process section.

### Discretionary refusal of access

The doctor may choose not to provide access where:

- It would have an unreasonable impact on the privacy of other people;
- The request is frivolous or vexatious;
- The information relates to existing or anticipated legal proceedings between the organisation and the information would not ordinarily be obtainable by the process of discovery in those proceedings;
- It would reveal the clinic's intentions in relation to negotiations with the individual (other than re the provision of a health service), in such a way as to expose us unreasonably to disadvantage;
- It would be likely to prejudice a law enforcement function by or on behalf of a law enforcement agency;
- The individual has already unsuccessfully made a request for the information, and there are no reasonable grounds for making the request again.

Where there are direct inconsistencies between the *Victorian Health Records Act* and the Commonwealth *Privacy Act*, the Commonwealth law will prevail.

## **ACCESS TO INFORMATION COLLECTED BEFORE 21 DECEMBER 2001**

The privacy legislation gives patients access to information collected after 21 December 2001, **and** to information that is collected before 21 December 2001 which is referred to or used after that date. Therefore there may be cases where a patient is not entitled to see information collected prior to 21 December 2001.

If Blackburn Clinic have written a medico-legal report after 21/12/2001, then full access to the record is entitled.

Where the information is older than 21/12/2001, Blackburn Clinic have the right to only provide an 'accurate summary'.

## **REQUESTS FOR ACCESS**

Patients do not have to give reasons for requesting access.

The privacy legislation does not require immediate handing over of a record or a test result. Access should however be provided within a reasonable time (no longer than 45 days).

If a patient requests access to a test result (whether before the doctor has had the opportunity of consulting with the patient, or after) the doctor should handle this situation in accordance with usual clinical practice. A hard copy of test results may be given to the patient after consultation with their doctor.

Where a patient requests access to a test report from 12 months (or more) ago, after appropriate clinical investigations had occurred, the request should still be referred to the doctor to handle in accordance with usual clinical practice.

Where a patient requests more detailed access, for example a copy of the entire file or a chance to view a large portion of the file, this would normally require written application for access as described below.

If the patient requests a COPY of the file, then Blackburn Clinic must comply – an accurate SUMMARY can only be supplied if the patient agrees to this.

We will not release our original records, as they belong to Blackburn Clinic.

There are some circumstances in which access is restricted, and in these cases reasons for denying access will be explained.

**PATIENTS CAN ONLY BE GIVEN ACCESS TO THEIR MEDICAL RECORD WHILE THEIR GP IS PRESENT TO DISCUSS AND EXPLAIN THE RECORD.** No patient will be allowed unsupervised access to their record.

### **The access process:**

The request should **initially be referred to the patient's regular GP**, who will determine whether the information can be **provided 'simply, freely and easily'**, or whether to ask the patient to complete a 'Request for access to medical records' form. Patients are encouraged to read the following document:

*Document: "Your Privacy is our Business" AMA brochure.* Copies of this brochure can be requested from Blackburn Clinic Reception.

Where the GP decides that a more formal level of access is required, the GP shall ask the patient to complete the following written document:

*Document: "Request for access to medical records" form developed by Blackburn Clinic.* This form is also available from Reception at Blackburn Clinic.

Examples of information that could be provided 'simply, freely and easily' might be a list of Current Medications, a copy of a test result, or a Summary of medical conditions (where this is not on computer the GP may dictate it in the patient's presence with the written document to be posted later). If the patient needed to see the GP for other reasons this could perhaps be dealt with during a standard consultation, in which case no additional charge would apply. If the patient did not need to see the GP a standard fee (described below) would apply.

### **TYPES OF ACCESS AND COSTS:**

The types of access available, and relevant costs, are outlined below.

A range of fees (as set by the Health Records Act) are payable to cover Blackburn Clinic's costs in providing access.

#### **Accurate Summary**

- The usual fee for a consult of comparable duration, **or**
- \$25 per 15 minutes or part thereof,

Whichever is the greater. Add GST.

**BUT the fee must not exceed \$80.**

There is no Medicare rebate available for this fee and this should be noted on the private account.

#### **Copy**

- 20 cents per A4 black & white page (photocopied or printed from computer), **plus**
- Reasonable costs if not A4, or if in color, **plus**
- Reasonable costs incurred in assessing and collating the information (ie. **time** spent by doctor and or staff), but **not exceeding \$20**. Add GST.

There is no Medicare rebate available for this fee and this should be noted on the private account.

#### **Viewing file with explanation by GP**

- The usual fee for a consult of comparable duration.

It is not specified whether a Medicare rebate is available for such a consult.

#### **Inspection of file with no explanation of contents**

Note – Blackburn Clinic does not allow patients to access their medical record without their GP present to discuss and explain the record. Therefore this option is not really offered at Blackburn Clinic.

- \$5 per 15 minutes (or part thereof) for supervision, **plus**
- Reasonable costs incurred in assessing and collating the information, **not exceeding \$20**. Add GST.

#### **Changes to the medical record:**

If a patient finds that the information held on them is not accurate or complete, the patient may have that information amended accordingly by their GP.

**Parents/guardians and children:**

The right of children to privacy of their health information, based on the professional judgement of the doctor and consistent with the law, might at times restrict access to this information by parents or guardians.

**DISCLOSURE OF HEALTH INFORMATION TO MEDICAL DEFENCE ORGANISATIONS (MDO) AND LAWYERS**

Doctors may be obliged to disclose patient information relating to adverse outcomes to their MDO, insurer, medical experts or lawyers, without obtaining patient consent, so long as the disclosure is within the reasonable expectations of the patient.

**COMPLAINT HANDLING PROCESS**

The patient's GP would usually be the first appropriate person to discuss any complaints. Most issues can be resolved simply through discussion with the patient. Only on failure to reach common ground would the Privacy Commissioner be asked to investigate a complaint.

Contact details for Privacy Commissioner:

PRIVACY HOTLINE: 1300 363 992

Website: [www.privacy.gov.au](http://www.privacy.gov.au)

Email: [privacy@privacy.gov.au](mailto:privacy@privacy.gov.au)

Fax: 02 9284 9666

Level 8 Piccadilly Tower  
133 Castlereagh St  
Sydney NSW 2000

GPO Box 5218  
Sydney NSW 1042

**Second opinion of refusal of access**

When advised that access has been refused on the grounds of *serious threat to the individual's life or health*, the individual can ask for a 'second opinion'. The individual may nominate any health service provider who has consented to being nominated. The clinic must accept this nomination if they provide the same kind of service as a GP and have the ability to interpret and understand the health information. The clinic must give a copy of the file to the nominated health service provider within 14 days. That person then looks at the file, discusses it with the usual doctor at Blackburn Clinic, and makes a decision as to whether it poses a threat to the individual's life or health. If the second opinion is that there is no threat, access must be provided in the form of inspection, but a copy does not have to be provided.

## **COLLECTION OF PATIENT HEALTH INFORMATION**

Information about a patient's medical and family health history is needed to provide accurate medical diagnoses and appropriate treatment.

Health information will normally be collected from the patient, and otherwise occur with the consent of the patient. Thereafter, consent for the use and disclosure of the information is not required provided the use or disclosure is for the 'primary purpose', or is a secondary purpose directly related to the primary purpose so long as it is within the 'reasonable expectations of the patient'.

Examples of 'primary purpose' include:

- Collecting health information for the restricted purpose of attending to a particular episode of care; or
- to provide a more holistic approach and cater for ongoing health care.

Discussion between the doctor and patient can ensure the doctor's approach matches the patient's expectations.

In circumstance of referral to another health provider (eg. specialist, radiologist, pathologist) it should be 'reasonably expected' that information about the patient will need to be shared with that health provider. Some information about patients is also provided to Medicare (the Health Insurance Commission) for billing and medical rebate purposes.

There are also circumstances where a medical practitioner is legally bound to disclose personal information – for example, the mandatory reporting of communicable diseases.